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Recommended Citation
Utah Code Annotated Title 10-7 (Michie, 1962)

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CHAPTER 7

MISCELLANEOUS POWERS OF CITIES AND TOWNS

ARTICLE 1

GENERAL POWERS AND MODE OF EXERCISE

10-7-1. Cities and towns as political bodies—Common seal.—Cities and towns shall be bodies politic and corporate with perpetual succession. They shall be known and designated by the name and style adopted, and under such name may sue and be sued, make contracts and acquire and hold real and personal property for corporate purposes. They shall have a common seal and may change the same at pleasure.

History: R. S. 1898 & C. L. 1907, § 180; C. L. 1917, § 531; R. S. 1933 & C. 1943, 15-7-1.

Cross-References.

Bond not required in civil actions, 78-27-12.

Civic Auditorium and Sports Arena Act, 11-11-1 et seq.

Constitutional powers, Const. Art. XI, § 5.

County commissioners, powers conferred upon cities not diminished, 17-5-51.

Court reporters in city courts, 78-56-10 to 78-56-12.

Drainage districts, organization in cities and towns, 19-4-16.

Legislature may not delegate to special commission power to interfere with or perform municipal functions, Const. Art. VI, § 29.

Unfair Practices Act, injunctive relief, right to maintain actions for, 13-5-14.

1. Actions by or against cities or towns.

The legislature may, by statute, prescribe conditions upon which suits may be brought and maintained against a municipality. Dahl v. Salt Lake City, 45 U. 544, 549, 147 P. 622.

2. Taxpayer's action.

Taxpayer may obtain relief against waste of public funds through unauthorized or ultra vires acts of municipality, where there is no special statute by which some particular officer is designated in whose name action must be brought for benefit of all taxpayers. Brummitt v. Ogden Waterworks Co., 33 U. 285, 296, 93 P. 828.

Where city is acting within its authorized powers, taxpayer may not arrest its acts merely because such acts would be unwise, improvident, or extravagant. Brummitt v. Ogden Waterworks Co., 33 U. 285, 296, 93 P. 828.

3. Implied contracts.

Cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter, or otherwise improve streets, and hence, city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

4. Contracts.

City is authorized to contract with a sewer district for sewage disposal. Bair v. Layton City Corp., 6 U. (2d) 138, 307 P. 2d 895.

Collateral References.

Municipal Corporations⇦57.

62 C.J.S. Municipal Corporations § 106.

Seal, 37 Am. Jur. 635, Municipal Corporations § 17.

Additional compensation for completing building or construction contract, validity of promise of, 25 A. L. R. 1450, 55 A. L. R. 1333, 138 A. L. R. 136.

Advertising or other forms of publicity, municipal expenditures for, 79 A. L. R. 466.

Attractive nuisance doctrine as applicable to municipalities, 36 A. L. R. 34, 39 A. L. R. 486, 45 A. L. R. 982, 52 A. L. R. 1351, 53 A. L. R. 1344, 60 A. L. R. 1444.

Authority of attorney to compromise suit for municipality, 66 A. L. R. 119.

Boat or barge, power to purchase or charter, 39 A. L. R. 1332.

Capacity of municipality as trustee for maintenance or care of private cemetery, burial lot, tomb, or monument, or erection of tomb or monument, 47 A. L. R. 2d 622.

Commission and other modern forms of municipal government as affecting liability of municipality for torts, 30 A. L. R. 473.

Constitutionality of statute which relieves municipality from liability for torts, 124 A. L. R. 350.

Contributory negligence as defense in action by municipality, 1 A. L. R. 2d 827.

Conveyance by municipality as carrying title to center of highway, 2 A. L. R. 6, 49 A. L. R. 2d 982.

Declaratory judgments in matters affecting municipalities, 19 A. L. R. 1136, 50 A. L. R. 54, 68 A. L. R. 126, 87 A. L. R. 1232, 114 A. L. R. 1361, 123 A. L. R. 285.

Fireworks display, municipal liability for injuries from, 93 A. L. R. 1356.

Granting or taking of lease by municipality as within authorization of purchase or acquisition thereof, 11 A. L. R. 2d 168.

Immunity of municipality from liability for torts in exercise of governmental functions as applicable to torts outside municipal limits, 140 A. L. R. 1058.

Liability for injuries sustained at municipal dump, 63 A. L. R. 332, 156 A. L. R. 714.

Liability insurance, power to take out, 33 A. L. R. 717.

Liability of municipal corporation for injuries due to conditions in parks, 29 A. L. R. 863, 42 A. L. R. 263, 99 A. L. R. 686, 142 A. L. R. 1340.

Liability of municipal corporation or its licensee for torts of independent contractors, 25 A. L. R. 426, 52 A. L. R. 1012.

Liability of municipality for damage caused by fall of tree or limb, 14 A. L. R. 2d 186.

Liability of municipality for mob or riot damage, 13 A. L. R. 751, 23 A. L. R. 297, 44 A. L. R. 1137, 52 A. L. R. 562.

Liability of municipality or other governmental body on implied or quasi-contracts for value of property or work, 110 A. L. R. 153, 154 A. L. R. 356.

Liability of municipality to contractor for mistake of its officers or employees in preparing estimates, 16 A. L. R. 1131.

Lobbying contract with regard to town, validity, 29 A. L. R. 157, 67 A. L. R. 684.

Power of city to compromise claim, 15 A. L. R. 2d 1359.

Power of legislature to impose, or municipality to assume, liability for acts of officials or employees in governmental functions, 89 A. L. R. 394.

Power of municipal corporation to exchange its real property, 60 A. L. R. 2d 220.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 A. L. R. 997.

Power of municipality to consent to or confess judgment, 67 A. L. R. 1503.

Power of municipality to establish or conduct public garage or parking station, 8 A. L. R. 2d 373.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A. L. R. 2d 595.

Right of municipality or other political subdivision to enforce against other party contract which was in excess of former's power, or which did not comply with the conditions of its power in that regard, 122 A. L. R. 1370.

Right to compel municipality to extend its water system beyond its territorial limits, 48 A. L. R. 2d 1230.

Right to go behind money judgment against public body in a mandamus proceeding to enforce it, 155 A. L. R. 464.

Rule of immunity from liability for acts in performance of governmental functions as applicable to injury or death as result of nuisance, 75 A. L. R. 1196, 56 A. L. R. 2d 1415.

Trust, power to accept and administer, 10 A. L. R. 1368.

Use of municipal automobile as a corporate or as a governmental function, 110 A. L. R. 1117, 156 A. L. R. 714.

Validity of contract exempting municipality from liability for negligence, 41 A. L. R. 1358.

Validity of contract to "lobby" with respect to municipal measure, 29 A. L. R. 157, 67 A. L. R. 684.

10-7-2. Powers to be exercised by ordinance.—When by this title power is conferred upon the board of commissioners, city council or board of trustees to do and perform any act or thing and the manner of exercising the same is not specifically pointed out, the board of commissioners, city council or board of trustees may provide by ordinance the manner and details necessary for the full exercise of such powers.

History: R. S. 1898 & C. L. 1907, § 207; C. L. 1917, § 578; R. S. 1933 & C. 1943, 15-7-2.

Cross-Reference.

Direct legislation elections in cities and towns, 20-11-21 to 20-11-25.

1. Validity of delegation of power.

Although law-making power of state is vested in legislature, it is competent for legislature to delegate power to municipal corporations to pass ordinances which, within municipality, shall have same force, as statutes, to control municipal affairs. Eureka City v. Wilson, 15 U. 53, 48 P. 41, affd. 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317.

2. Operation and effect of ordinance.

Although ordinance is enactment of municipal government and its application is local, ordinance, when valid, has force and effect, in favor of municipality and against persons bound by it, of enactment of legislature. Eureka City v. Wilson, 15 U. 53, 48 P. 41, affd. 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317.

3. Enforcement of ordinance.

If commissioners assume to give directions as to the enforcement of an ordinance, or as to the method of its enforcement, and such ordinance is held to be inoperative, they are joint tort-feasors with the peace officers who carry out their orders, at least where they did not act as a board, but informally and independently as individuals. Roe v. Lundstrom, 89 U. 520, 57 P. 2d 1128.

4. City minimum wage laws.

As cities have no police power, they may not fix a minimum wage to be paid by those receiving municipal contracts, for there is in this state no express or implied power conferred upon a municipality which directly or by implication authorizes a city to dictate to a contractor the wages he shall pay his employees. Nor may the city prescribe the hours that shall constitute a day's labor. Bohn v. Salt Lake City, 79 U. 121, 130, 8 P. 2d 591, 81 A. L. R. 215.

5. Power to issue self-liquidating bonds.

Proposed issuance of bonds for construction of electric plant by a municipality, which were payable solely from system's revenues, held authorized under the "special fund doctrine," and the city could not be restrained in such proceeding, notwithstanding its failure to adhere to the procedure prescribed by the Granger Act. Utah Power & Light Co. v. Ogden City, 95 U. 161, 179, 79 P. 2d 61.

Collateral References.

Municipal Corporations⊂⇒61.

62 C.J.S. Municipal Corporations § 160.

Ordinances, 37 Am. Jur. 754, Municipal Corporations § 141 et seq.

Conclusiveness of declaration in ordinance of an emergency, 35 A. L. R. 2d 586.

Effect of simultaneous repeal and reenactment of all, or part, of legislative act, 77 A. L. R. 2d 336.

Effect of unreasonableness, or variance from constitutional, charter, or statutory provision, of penalty prescribed by ordinance, 138 A. L. R. 1208.

What constitutes requisite majority of members of municipal council voting on issue, 43 A. L. R. 2d 698.

ARTICLE 2

LOCAL BOARDS OF HEALTH

Section 10-7-3. Number of members—Executive officer.

10-7-3. Number of members—Executive officer.—It shall be the duty of the board of trustees, board of commissioners or city council of every incorporated town or city to establish by ordinance a board of health for such town or city, to consist of three or more persons, one of whom when

practicable shall be a duly licensed physician, who shall be the executive officer of the board and be known as the health officer.

History: R. S. 1898 & C. L. 1907, § 1105; C. L. 1917, § 2720; R. S. 1933 & C. 1943, 15-7-3.

Compiler's Note.

Whenever a health department is created in accordance with provisions of the Public Health Code (Laws 1953, ch. 42; secs. 26-15-1 to 26-15-89), the provisions of this section shall not apply. See 26-15-37.

Cross-References.

Local boards of health generally, 26-5-1 et seq.

Local full-time health departments, 26-15-33 et seq.

Vital statistics, 26-15-9 et seq.

1. Powers of board of health.

Former statute, as well as state's inherent police power, held to have justified action of city boards of health and education in excluding unvaccinated children from schools during time of smallpox epidemic in state. State ex rel. Cox v. Board of Education, 21 U. 401, 60 P. 1013. (Baskin, J., dissenting.)

Collateral References.

Municipal Corporations⊂⇒177.

62 C.J.S. Municipal Corporations § 651.

Board of health, 37 Am. Jur. 717, Municipal Corporations § 107; 37 Am. Jur. 855, Municipal Corporations § 224.

Power of health board to employ attorney, 2 A. L. R. 1212.

ARTICLE 3

WATER, LIGHTING AND SEWERS

10-7-4. Water supply—Acquisition—Condemnation—Protest—Special election.—The board of commissioners, city council or board of trustees of any city or town may acquire, purchase or lease all or any part of any water, waterworks system, water supply or property connected therewith, and whenever the governing body of a city or town shall deem it necessary for the public good such city or town may bring condemnation proceedings to acquire the same; provided, that if within thirty days after the passage and publication of a resolution or ordinance for the purchase or lease or condemnation herein provided for one-third of the resident taxpayers of the city or town, as shown by the assessment roll, shall protest against the purchase, lease or condemnation proceedings contemplated, such proposed purchase, lease or condemnation shall be referred to a special election, and if confirmed by a majority vote thereat, shall take effect; otherwise it shall be void. In all condemnation proceedings the value of

land affected by the taking must be considered in connection with the water or water rights taken for the purpose of supplying the city or town or the inhabitants thereof with water.

History: L. 1903, ch. 103, § 1; C. L. 1907, § 206x2; C. L. 1917, § 575; R. S. 1933 & C. 1943, 15-7-4.

Cross-References.

County service areas, contracts with authorized, 17-29-25.

County water supply, 17-6-1 et seq.

Eminent domain, 78-34-1 et seq.

Malicious destruction of dams, canals and reservoirs, misdemeanors, 76-62-4.

Metropolitan water districts, 73-8-1 et seq.

Water conservancy district, sale or lease to municipality, 73-9-17.

Water supply, towns may provide, 10-13-14.

Waterworks and hydrants, cities may purchase, 10-8-71.

1. In general.

Cited in Barlow v. Clearfield City Corp., 1 U. (2d) 419, 268 P. 2d 682, 685.

2. Construction and application.

"This provision does not limit or define the measure of damages which is sustained by the owner of a water right taken by eminent domain proceedings. Rather it secures to the owner the right to have the value of his land considered in connection with his water right. To hold otherwise would be to ignore Const. Art. I, § 22 which provides that 'Private property shall not be taken or damaged for public use without just compensation.' " Sigurd City v. State, 105 U. 278, 142 P. 2d 154, 158.

By the terms of this section and Code 1943, 104-61-1, town of North Salt Lake had authority to condemn water system for use of its inhabitants even though property belonged to company which was furnishing public service. North Salt Lake v. St. Joseph Water & Irr. Co., 118 U. 600, 223 P. 2d 577.

The requirement of a resolution or ordinance is to apprise the resident taxpayers of the town's proposed condemnation proceeding and afford them the opportunity to protest it if they so desire. The requirement is not for the purpose of notifying those whose property is the subject of the resolution or ordinance. Trenton Town v. Clarkston Irr. Co., 11 U. (2d) 37, 354 P. 2d 846.

3. Compliance with provision.

The statutory procedure prescribed by this section must be strictly followed, and an ordinance or resolution declaring it necessary must first be adopted before instituting condemnation proceedings. Section 10-7-8 has nothing to do with the authority to institute condemnation proceedings. The owner has the right to insist that the provisions of this section be complied with before he is bound to surrender his property. Town of Tremonton v. Johnston, 49 U. 307, 164 P. 190.

4. Determination of value of land taken.

In a town's condemnation proceedings under this section to condemn waters of a spring, evidence as value thereof must not be too remote. Town of Tremonton v. Johnston, 49 U. 307, 164 P. 190.

5. Scope of resolution.

Where a resolution of the trustees of a town gave notice to resident taxpayers of a proposed condemnation action for the acquisition of an additional water supply, the resolution was sufficient and the fact that the resolution referred to a certain creek as the source of supply and that the condemnation proceeding referred to a spring which was a tributary of the creek did not show that the condemnation proceeding was beyond the scope of the resolution. Trenton Town v. Clarkston Irr. Co., 11 U. (2d) 37, 354 P. 2d 846.

Collateral References.

Waters and Water Courses⚷183(3).

94 C.J.S. Waters § 228.

Water supply, 37 Am. Jur. 736, Municipal Corporations § 122.

Contract for water supply extending beyond term of officers making it, 70 A. L. R. 794, 149 A. L. R. 336.

Liability of city for damage due to water escaping from pipeline, 14 A. L. R. 552.

Liability of city for tort of officer or employee of water department, 24 A. L. R. 545, 28 A. L. R. 822, 54 A. L. R. 1497.

Liability of municipal corporation for tort of officer or employee of water department, 24 A. L. R. 545, 28 A. L. R. 822, 54 A. L. R. 1497.

Liability of municipality for damage to person or property due to hydrant, 113 A. L. R. 661.

Liability of municipality for furnishing impure water, 5 A. L. R. 1402, 13 A. L. R. 1132, 61 A. L. R. 452.

Liability of municipality for pollution of subterranean waters, 38 A. L. R. 2d 1305.

Necessity of presenting claim for damage to property resulting from operation of waterworks, 52 A. L. R. 655.

Requirement that municipal contracts be awarded on competitive bidding as applicable to contracts for public utility (gas, electricity and water), 128 A. L. R. 168.

Right of municipality, as riparian owner, to use of water for public supply, 141 A. L. R. 639.

Right to compel municipality to extend its water system beyond its territorial limits, 48 A. L. R. 2d 1230.

Water supply ordinances, 72 A. L. R. 673.

10-7-5. Limitations on right to acquire and dispose of.—It shall not be lawful for any city or town to lease or purchase any part of such waterworks less than the whole, or to lease the same, unless the contract therefor shall provide that the city or town shall have control thereof and that the net revenues therefrom shall be divided proportionately to the interests of the parties thereto; said contract shall also provide a list of water rates to be enforced during the term of such contract.

History: L. 1903, ch. 103, § 2; C. L. 1907, § 206x3; C. L. 1917, § 576; R. S. 1933 & C. 1943, 15-7-5.

10-7-6. Contracts for lighting public buildings, streets and alleys—Limitation.—The board of commissioners, city council or the board of trustees may enter into a contract on behalf of the city or town for the lighting of its public buildings, streets, alleys and other public places for such period of time as such board of commissioners, city council or board of trustees may deem advisable, not to exceed three years.

History: L. 1915, ch. 89, § 1; C. L. 1917, § 577; R. S. 1933 & C. 1943, 15-7-6.

Collateral References.

Municipal Corporations⇨226.

63 C.J.S. Municipal Corporations § 973.

Lighting plant, 38 Am. Jur. 248, Municipal Corporations § 560.

Electric light or power line in street or highway as additional servitude, 58 A. L. R. 2d 525.

Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like, 19 A. L. R. 2d 344.

10-7-7. Bond issues for water, light and sewers—Submission to electors.—Any city of the first or second class may incur an indebtedness, not exceeding in the aggregate with all other indebtedness eight per cent of the value of the taxable property therein, for the purpose of supplying such city with water, artificial light or sewers, when the works for supplying such water, light and sewers shall be owned and controlled by the municipality. Any city of the third class and any town may become indebted to an amount not exceeding in the aggregate with all other indebtedness twelve per cent of the value of the taxable property therein for the purpose of supplying such city or town with water, artificial light or sewers, when the works for supplying such water, light and sewers shall be owned and controlled by the municipality. The proposition to create such debt must be first submitted to the vote of such qualified electors as shall have paid a property tax in the year preceding such election and a majority of those voting thereon must have voted in favor of incurring such debt.

History: R. S. 1898 & C. L. 1907, § 308; L. 1911, ch. 4, § 1; 1917, ch. 98, § 1; C. L. 1917, § 792; R. S. 1933 & C. 1943, 15-7-7.

Cross-References.

Certification of bonds, 11-1-1.

Debt limit, Const. Art. XIV, § 3.

1. Construction and application.

Necessary improvements must be paid for either out of revenues within treasury or such as may be lawfully anticipated as revenues of current year, or debt incurred for such improvements must be authorized by majority vote of qualified electors as provided by Const. Art. XIV, § 3, and be within constitutional limitation as required by Const. Art. XIV, § 4, or be paid exclusively out of net earnings or incomes of property or improvements purchased. Fjeldsted v. Ogden City, 83 U. 278, 28 P. 2d 144.

2. Power to incur indebtedness for water, light, and sewers.

Under Const. Art. XIV, § 3, and Const. Art. XIV, § 4, prior to its amendment in 1910, held that legislature was vested with power to authorize cities to create additional indebtedness for light, water, or sewer purposes, not exceeding four per cent of value of taxable property within their boundaries. State ex rel. Riter v. Quayle, 26 U. 26, 71 P. 1060.

Bonded indebtedness of four per cent may be incurred for general city purposes, including supplying of city with water, lights, or sewers, and in addition city may also incur indebtedness of same amount for purpose of supplying city with water, light or sewers alone. State ex rel. Willis v. Heber City, 36 U. 1, 102 P. 309.

Proposed bond issue of city to improve its waterworks system held debt and incapable of being assumed unless approved as required by Const. Art. XIV, § 3, and within limitations of Const. Art. XIV, § 4, as against contention that income from waterworks system was pledged to pay interest and principal on bonds which constituted special fund, where income from improvements and from existing waterworks system could not be segregated and income from latter was used to pay other bonds and surplus applied to general obligations of city. Fjeldsted v. Ogden City, 83 U. 278, 28 P. 2d 144. (Straup, C. J., and Hanson, J., dissenting.)

Proposed bond issue of city to improve and repair waterworks system in an amount in excess of taxes for current year and payable out of waterworks revenue, although valid with respect to limitation of indebtedness by reason of Const. Art. XI, § 5, subd. (d) as amended, was debt and hence invalid where issuance was not authorized by taxpaying electors as required by Const. Art. XIV, § 3. Wadsworth v. Santaquin City, 83 U. 321, 28 P. 2d 161. (Straup, C. J., and Hanson, J., dissenting.)

3. Power to issue bonds payable out of earnings.

City is not prohibited from issuing self-liquidating bonds by this section since it only applies to bonds issued within constitutional debt limit. Fjeldsted v. Ogden City, 83 U. 278, 28 P. 2d 144, followed in Utah Power & Light Co. v. Ogden City, 95 U. 161, 179, 79 P. 2d 61.

Collateral References.

Municipal Corporations⇐911.

64 C.J.S. Municipal Corporations § 1908.

Issuance and delivery of bonds, 43 Am. Jur. 365, Public Securities and Obligations § 117 et seq.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A. L. R. 190.

Printing, lithographing or other mechanical signature on public bonds, coupons or other public pecuniary obligation, 94 A. L. R. 768.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 A. L. R. 1018.

Provision of bonds, coupons or other obligations of municipal or political body, or of statute or ordinance under which they are issued, that they will be accepted in payment of taxes, validity and effect of, 100 A. L. R. 1339.

Right to call governmental bonds in advance of their maturity, 109 A. L. R. 988.

Validity of submission of proposition to voters at bond election as affected by inclusion of several structures or units, 4 A. L. R. 2d 617.

10-7-8. Election—Notice—Ballots.—When the board of commissioners, city council or the town board of trustees of any city or town shall have decided to submit the question of incurring such bonded indebtedness, it shall by order specify the particular purpose for which the indebtedness is to be created and the amount of bonds which it is proposed to issue, and shall provide for submitting the question of the issue of such bonds to the qualified electors of the city or town at the next general election, or at a special election to be called for that purpose by the board of commissioners, city council or board of trustees. If the question is submitted at a special election, it shall be held, except as herein otherwise provided,

as nearly as practicable in conformity with the general election laws of the state. Notice shall be given of such election by publication for four weeks prior thereto once a week in some newspaper or newspapers published in the city or town, or if there is no newspaper, then by posting notices. The board of commissioners, city council or board of trustees shall cause ballots to be printed and furnished to the qualified electors, which shall read: "For the issue of bonds: Yes. No." If a majority of the qualified electors voting thereon shall have voted in favor of incurring such indebtedness, the board of commissioners, city council or board of trustees may proceed to issue the amount of bonds specified. If, however, the qualified electors shall have voted in favor of incurring an indebtedness in excess of the amount permitted by the constitution and laws of the state, such vote shall be full authority for the board of commissioners, city council or board of trustees to issue bonds to the amount permitted by the Constitution and laws of the state.

History: R. S. 1898 & C. L. 1907, § 309; L. 1909, ch. 3, § 1; C. L. 1917, § 793; R. S. 1933 & C. 1943, 15-7-8.

1. Construction and application.

This section has nothing to do with the authority to institute condemnation proceedings under 10-7-4. Town of Tremonton v. Johnston, 49 U. 307, 164 P. 190.

2. Notice, necessity for.

The notice required by this section is jurisdictional, and without such notice no election can legally be held. State ex rel. Utah Savings & Trust Co. v. Salt Lake City, 35 U. 25, 99 P. 255, 18 Ann. Cas. 1130.

3. Sufficiency of notice.

Notice of special election in city on question of issuing bonds for water supply and sewers was held sufficient where it gave date of election, stated place where it was to be held, contained statement that it would be conducted according to statutes and laws of state, polling places were designated by city council and notice, and notice was published for time required in newspaper. State ex rel. Utah Savings & Trust Co. v. Salt Lake City, 35 U. 25, 99 P. 255, 18 Ann. Cas. 1130.

Whenever bonded indebtedness is to be incurred or created, city council is required, by order or resolution, and in published notice to electors, to specify purpose for which indebtedness is to be created or incurred, and for which proposed bonds are to be issued, and notice that merely stated indebtedness is to be created, and bonds issued "for general corporate purposes," is entirely too general. State ex rel. Willis v. Heber City, 36 U. 1, 102 P. 309.

4. Irregularities in election.

An election held under this section cannot be declared illegal simply because of some irregularity which it is not claimed affected the result thereof; nor will such irregularities affect the validity of the bonds issued in pursuance thereof. It would probably be different with respect to jurisdictional matters. State ex rel. Utah Savings & Trust Co. v. Salt Lake City, 35 U. 25, 42, 99 P. 255, 18 Ann. Cas. 1130.

Collateral References.

Municipal Corporations⇐918(2).
64 C.J.S. Municipal Corporations § 1922.

Effect of inclusion in call for election or proposal for bond issue submitted to people of unauthorized method of payment or retirement, 93 A. L. R. 362.

Mistake, ambiguity or omission in statement as to indebtedness, in call for election or proposal for bond issue, as affecting validity of election or bonds issued pursuant thereto, 116 A. L. R. 1258.

Statement regarding cost of proposed public improvement in ballot for special election in that regard, 117 A. L. R. 892.

10-7-9. Sale of bonds—Amount—Tax levy to pay interest—Utility rates—Sinking fund—Serial or term bonds.—The board of commissioners, city council or board of trustees as the case may be shall provide by ordinance for the issuance and disposal of such bonds; provided, that no such bonds shall be sold for less than their face value. The board of commissioners, city council or board of trustees shall annually levy on all taxable property

within the boundaries of the issuer a sufficient tax to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within the time for which such bonds are issued which levy shall be made without regard to any statutory limitation on the taxing power of such issuer which may now exist or, unless an express contrary provision appears in the statute, which may hereafter be enacted by the legislature; provided, that whenever bonds shall have been issued for the purpose of supplying any city or town with artificial light, water or other public utility the rates or charges for the service of the system or plant so constructed may be made sufficient to meet such payments, in addition to operating and maintenance expenses, and taxes shall be levied to meet any deficiencies. Water or sewer bonds may be issued for a period not exceeding forty years; other bonds may be issued for a period not exceeding twenty years. Such bonds may be either serial or term bonds.

History: R. S. 1898 & C. L. 1907, § 310; C. L. 1917, § 794; L. 1921, ch. 19, § 1; 1925, ch. 63, § 1; R. S. 1933 & C. 1943, 15-7-9; L. 1953 (1st S. S.), ch. 2, § 1.

Compiler's Note.

Prior to the 1953 amendment that part of the second sentence preceding the proviso read as follows: "The board of commissioners, city council or board of trustees shall annually levy a sufficient tax to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within the time for which such bonds are issued."

Effective Date.

Section 2 of Laws 1953 (1st S. S.), ch. 2 provided that the act should take effect upon approval. Approved December 21, 1953.

1. Construction and application.

This section applies to sale of all bonds issued pursuant to statutory and constitutional authority, and does not apply to such bonds or other obligations as are not a debt of the municipality. Fjeldsted v. Ogden City, 83 U. 278, 28 P. 2d 144.

2. Power to issue bonds payable out of earnings.

City is not prohibited from issuing self-liquidating bonds by this section, since it only applies to bonds issued within constitutional debt limit. Fjeldsted v. Ogden City, 83 U. 278, 28 P. 2d 144, followed in Utah Power & Light Co. v. Ogden City, 95 U. 161, 179, 79 P. 2d 61.

3. Effect on bonds of irregularities in election.

Ordinance providing for election in city to authorize issuance of bonds of city for water supply and sewers, which declared that net revenues from water system would be sinking fund for payment of bonds and interest, though erroneous, did not require setting aside of election, since statement was, at most, an irregularity which did not affect validity of election in absence of showing that any of voters were induced to vote for bonds. State ex rel. Utah Savings & Trust Co. v. Salt Lake City, 35 U. 25, 99 P. 255, 18 Ann. Cas. 1130.

4. Discharge of bonded indebtedness.

This section is mandatory in its provisions that the interest on, and the principal of, the bonds shall be raised only by taxation. Logan City v. Public Utilities Comm., 72 U. 536, 553, 271 P. 961.

5. Municipally-owned plant.

Under this section, in the case of a municipally-owned electric plant, an option or discretion is given the city commission or board of trustees to pay the interest on and principal of the bonds either by taxation or from revenues derived from the operation of the plant, as well as to meet all operating and maintenance expenses, and if there is any deficiency, to meet the deficit by taxation. But this discretion is not given to the public utilities commission. Logan City v. Public Utilities Comm., 72 U. 536, 553, 271 P. 961.

The public utilities commission probably has no authority to fix the rates to be charged by a city for its municipally-owned plant. This section governs, and not the Public Utilities Act. If it undertakes to act, however, the commission must act in accordance with this section. Logan City v. Public Utilities Comm., 72 U. 536, 550, 271 P. 961, giving history of this section; explained in State Tax Comm. v. City of Logan, 88 U. 406, 419, 54 P. 2d 1197.

If city elects to meet expenses from operation of plant, it cannot levy a tax for any other purpose than to meet a deficiency. It cannot levy tax for expenses of operation, maintenance, interest on bonds, a sinking fund, and other contingencies. Logan City v. Public Utilities Comm., 72 U. 536, 271 P. 961.

Collateral References.

Municipal Corporations⇨919.
64 C.J.S. Municipal Corporations § 1918.

Sale of bonds at less than par or face value, 91 A. L. R. 7, 162 A. L. R. 396.

10-7-10. Water rates—Owner of premises liable.—No city or town which is the owner or in control of a system for furnishing water to its inhabitants shall be required to furnish water for use in any house, tenement, apartment, building, place, premises or lot, whether such water is for the use of the owner or tenant, unless the application for water shall be made in writing, signed by such owner or his duly authorized agent, in which application such owner shall agree that he will pay for all water furnished such house, tenement, apartment, building, place, premises or lot according to the ordinances, rules and regulations enacted or adopted by such city or town. In case an application for furnishing water shall be made by a tenant of the owner, such city or town may require as a condition of granting the same that such application contain an agreement signed by the owner thereof, or his duly authorized agent, to the effect that in consideration of the granting of such application the owner will pay for all water furnished such tenant, or any other occupant of the place named in the application, in case such tenant or occupant shall fail to pay for the same according to the ordinances, rules and regulations enacted or adopted by such city or town.

History: L. 1917, ch. 17, § 1; C. L. 1917, § 800; R. S. 1933 & C. 1943, 15-7-10.

1. Rate fixing a governmental function.

Fixing and regulating of water rates is a governmental function, and cannot be surrendered nor suspended by city council. Brummitt v. Ogden Waterworks Co., 33 U. 285, 301, 93 P. 828.

2. Extent of liability for water bills.

This section contains no provision requiring owner of premises to pay for water furnished to a prior owner or tenant of a prior owner. Home Owners' Loan Corp. v. Logan City, 97 U. 235, 240, 92 P. 2d 346.

Statute does not impress a lien on property for payment of delinquent water bills. Home Owners' Loan Corp. v. Logan City, 97 U. 235, 241, 92 P. 2d 346.

Collateral References.

Waters and Water Courses⇨203(1).
94 C.J.S. Waters § 285.

10-7-11. Failure to pay for service—Termination.—In case the owner of any of the premises mentioned in section 10-7-10, or the tenant or occupant, shall fail to pay for water furnished such owner, tenant or occupant, according to such ordinances, rules or regulations enacted or adopted, the city or town may cause the water to be shut off from such premises, and shall not be required to turn the same on again until all arrears for water furnished shall be paid in full.

History: L. 1917, ch. 17, § 2; C. L. 1917, § 801; R. S. 1933 & C. 1943, 15-7-11.

Compiler's Note.

The reference in this section to "section 10-7-10" appeared in Code 1943 as "section 15-7-10."

1. Construction and application.

Statute does not impress a lien on property for payment of delinquent water bills. Home Owners' Loan Corp. v. Logan City, 97 U. 235, 241, 92 P. 2d 346.

2. Validity of ordinance.

Ordinance prohibiting the turning on

of water from city waterworks for use on premises where bills have been incurred and remain delinquent, as against an owner who was not the occupant of the premises when water bills were incurred, and who never agreed to pay or be liable for the payment of those bills, held invalid, since such an ordinance may be directed only against those who have made themselves personally liable for the payment of water charges by agreement or use. Home Owners' Loan Corp. v. Logan City, 97 U. 235, 92 P. 2d 346.

Collateral References.

Waters and Water Courses⇐203(13).
94 C.J.S. Waters § 305.

10-7-12. Scarcity of water—Limitation on use.—In the event of scarcity of water the mayor of any city or the president of the board of trustees of any town may, by proclamation, limit the use of water for any purpose other than domestic purposes to such extent as may be required for the public good in the judgment of the board of commissioners or city council of any city or the board of trustees of any town.

History: L. 1917, ch. 17, § 3; C. L. 1917, § 802; R. S. 1933 & C. 1943, 15-7-12.

Collateral References.

Waters and Water Courses⇐202.
94 C.J.S. Waters § 310.

10-7-13. Right of entry on premises of water user.—All authorized persons connected with the waterworks of any city or town shall have the right to enter upon any premises furnished with water by such city or town to examine the apparatus, the amount of water used and the manner of use, and to make all necessary shutoffs for vacancy, delinquency or violation of the ordinances, rules or regulations enacted or adopted by such city or town.

History: L. 1917, ch. 17, § 4; C. L. 1917, § 803; R. S. 1933 & C. 1943, 15-7-13.

10-7-14. Rules and regulations for use of water.—Every city and town may enact ordinances, rules and regulations for the management and conduct of the waterworks system owner or controlled by it.

History: L. 1917, ch. 17, § 5; C. L. 1917, § 804; R. S. 1933 & C. 1943, 15-7-14.

1. Validity of ordinance.

Ordinance prohibiting the turning on of water from city waterworks for use on premises where bills have been incurred and remain delinquent, as against an owner who was not the occupant of the premises when water bills were incurred, and who never agreed to pay or be liable for the payment of those bills, held invalid, since such an ordinance may be directed only against those who have made themselves personally liable for the payment of water charges by agreement or use. Home Owners' Loan Corp. v. Logan City, 97 U. 235, 92 P. 2d 346.

Collateral Reference.

Power to supply water, 37 Am. Jur. 736, Municipal Corporations § 122.

10-7-14.1. Declaration of public policy.—Whereas, the purification of drinking water and the treatment of raw sewage are important to public health and welfare and create an unusual need for money with which to create proper facilities for the protection of the people of the state of Utah, it is hereby declared to be the public policy of this state to grant the privilege to municipalities to raise funds to improve the aforementioned health standards, to encourage the municipalities to provide that no waste shall be discharged into any waters of the state of Utah without first being given proper treatment, to provide for the treatment of water to be used for drinking purposes to protect the health of the citizens and to give municipalities the discretion to determine the priority of development of the

facilities directed toward the elimination of health hazards and pollution of public waters. The construction of the facilities herein mentioned shall be given an early priority in those areas where the present welfare of the people is endangered by the lack of such facilities.

History: L. 1953, ch. 21, § 1; 1953 (1st S. S.), ch. 3, § 1.

Compiler's Note.

The 1953 Special Session amendment added the last sentence.

Title of Act.

An act to grant municipalities of the state of Utah the right to levy not to exceed four mills on the dollar on all property within the municipality for the purpose of building facilities for treating culinary water of the municipality and facilities for the disposition, treatment and care of the sewage of the municipality or the creation of a reserve fund therefor, or to pay principal and interest on any bonds issued for the construction of such facilities.

Collateral References.

Waters and Water Courses⇐196.

Governmental control and regulation, 56 Am. Jur. 831, Waters § 412.

Liability of municipal corporation for damages for maintenance of sewer disposal plant as nuisance, 40 A. L. R. 2d 1198.

Municipal liability arising from negligence or other wrongful act in carrying out construction or repair of sewers, 61 A. L. R. 2d 874.

10-7-14.2. Special tax—Grant of power to levy.—There is hereby granted to the municipalities of the state of Utah not in an improvement district created for the purpose of establishing and maintaining a sewage collection, treatment or disposal system or a system for the supply, treatment or distribution of water pursuant to the provisions of chapter 6, Title 17, Utah Code Annotated 1953, in addition to all other rights of assessment, the right to levy a tax annually not to exceed four mills on the dollar of assessed valuation on all of the property in the municipality, which money raised by such levy shall be placed in a special fund and used only for the purpose of financing the construction of facilities to purify the drinking water of the municipality and the construction of facilities for the treatment and disposal of the sewage of the municipality, or to pay principal and interest on bonds issued for the construction of such facilities provided construction thereof has actually commenced subsequent to the enactment of this statute. The municipality may accumulate from year to year and reserve in said special fund, the money raised for this purpose. The 4 mill levy referred to in this act shall not be governed by the provisions of section 10-8-87, Utah Code Annotated 1953, limiting maximum tax levies in said cities. Such levy shall be made and collected in the same manner as other property taxes are levied and collected by municipalities.

History: L. 1953, ch. 21, § 2; 1953 (1st S. S.), ch. 3, § 1.

Compiler's Notes.

The 1953 amendment inserted the third sentence.

Section 10-8-87 was repealed by Laws 1961, ch. 24, § 2. For present provision relating to limit on total levy, see 10-10-57.

Separability Clause.

Section 3 of Laws 1953, ch. 21 provided as follows: "If any provision of this act is held invalid, the remainder of this act shall not be affected thereby."

Collateral References.

Municipal Corporations⇐406(2).

63 C. J. S. Municipal Corporations § 1295.

Water Supply, 51 Am. Jur. 424, Taxation § 395.

Sewers, construction or improvement of as a local district improvement within provisions authorizing or requiring special assessments, 134 A. L. R. 895.

DECISIONS UNDER FORMER LAW

1. Construction.

The fact that this statute is not construed so as to allow an additional power of taxation over and above the maximum in 10-8-87 does not render it nugatory. It creates a new purpose for which taxes may be levied. Moss v. Board of Comrs. of Salt Lake City, 1 U. (2d) 60, 261 P. 2d 961, 965.

2. Levy of tax.

This section, providing for a levy of 4 mills neither expressly nor by implication repeals or supersedes the limitation of 18.5 mills set out in 10-8-87 as the maximum tax levy permitted cities of the first class for all purposes. Moss v. Board of Comrs. of Salt Lake City, 1 U. (2d) 60, 261 P. 2d 961, 965.

10-7-14.3. Time limit for cities of first class.—In cities of the first class the authority to levy such additional 4 mills above the over-all limitation provided by section 10-8-87, Utah Code Annotated 1953, and as amended, shall be limited to a period of ten years from the date of the first levy.

History: L. 1953, ch. 21, § 4, added by L. 1953 (1st S. S.), ch. 3, § 1; L. 1955, ch. 15, § 1; 1957, ch. 17, § 1.

Compiler's Notes.

The 1955 amendment substituted "five years" for "ten years" near the end of the section and omitted a paragraph which read as follows: **"Approval by Voters.** In cities of the first class, the governing body may for the calendar year 1954 levy the tax provided for in section 2 hereof, thereafter, commencing with the calendar year 1955, no such tax may be levied without first having it approved by its electors in accordance with the following provision. The governing body of cities of the first class may at a general election or a special election called for the purpose, submit to the qualified taxpaying electors of such city the question of levying said tax in the amount and for the purposes hereinabove provided. The call for and notice of any such election shall be given, the election shall be held, voters' qualifications shall be determined, and the results thereof canvassed in the manner provided by sections 10-7-7 and 10-7-8, Utah Code Annotated 1953."

The 1957 amendment deleted "18.5" before "over-all," inserted "and as amended," and changed the period of limitation from 5 years to 10 years.

Section 10-8-87 was repealed by Laws 1961, ch. 24, § 2. For present provision relating to limit on total levy, see 10-10-57.

ARTICLE 4

SALE OF POWER PLANTS

10-7-15. Submitting proposition of sale to electors.—Whenever in the judgment of the board of commissioners or city council of any city, or the board of trustees of any town, it shall be deemed advisable to sell or lease the works or plant, constructed, purchased or used by such city or town for the purpose of generating or distributing electrical energy for light, heat or power purposes, such board of commissioners, city council or board of trustees, as the case may be, shall cause an appraisement of the property proposed to be sold or leased to be made by three resident taxpayers of such city or town, to be appointed by the commissioners, city council or board of trustees, and shall provide for submitting the question of the sale or lease of such property to the qualified electors of such city or town as shall have paid a property tax in the year preceding such

election, at the next general election or at a special election called for that purpose. Such election shall be called and conducted in the same manner as provided by statute for the issue of bonds in section 10-7-8, the necessary changes in the form of the ballot being made.

History: L. 1913, ch. 69, § 1; C. L. 1917, § 810; R. S. 1933 & C. 1943, 15-7-15.

Compiler's Note.

The reference in this section to "section 10-7-8" appeared in Code 1943 as "section 15-7-8."

1. Validity, construction and application.

This section is not void for uncertainty. And legislature may define the mode or method by which cities and towns may exercise their power to sell, lease or otherwise dispose of their property. McDonald v. Price, 45 U. 464, 146 P. 550.

2. Method of disposing of property.

The method prescribed by this section and article whereby cities and towns may sell, lease or otherwise dispose of their property must be at least substantially followed, or else the contract is invalid. That is, property must be appraised; the question of sale or lease must be submitted to vote of qualified voters; bids must be advertised for and received; property must be leased to highest responsible bidder, and the other conditions prescribed by this and the other sections of this article must be complied with. McDonald v. Price, 45 U. 464, 146 P. 550.

3. Disposition of rent from lease.

In case of a lease of the plant, the money or other thing of value that is received as rent is to be used for town or city purposes the same as other city or town money or property. McDonald v. Price, 45 U. 464, 146 P. 550.

Collateral References.

Municipal Corporations⇦225(3).
63 C.J.S. Municipal Corporations § 967.

Lease or sale of municipal plant or contract therefor as affecting right of municipality to complete, 118 A. L. R. 1098.

Power of city to sell, lease or mortgage waterworks, or interest therein, 61 A. L. R. 2d 595.

Power of municipality to mortgage or pledge public utility, 71 A. L. R. 828.

Power of municipality to sell, lease, or mortgage light plant, or interest therein, 61 A. L. R. 2d 595.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A. L. R. 2d 595.

Sale, lease or mortgage of municipal waterworks, gas or electric plant, 61 A. L. R. 2d 595.

Sufficiency of compliance with condition of sale or lease by municipality of utility plant, 52 A. L. R. 1052.

10-7-16. Call for bids—Notice—Contents.—In case a majority of the qualified electors of any city or town voting thereon at any general election or special election called for that purpose shall vote in favor of selling or leasing any property mentioned in section 10-7-15, the board of commissioners, city council or board of trustees, as the case may be, shall cause notice to be given by publication thereof for at least twenty days in a newspaper published or having general circulation in the city or town, giving a general description of the property to be sold or leased, and specifying the time when sealed bids for the said property, or for a lease thereon, will be received, and the time when and the place where the same will be opened.

History: L. 1913, ch. 69, § 2; C. L. 1917, § 811; R. S. 1933 & C. 1943, 15-7-16.

Compiler's Note.

The reference in this section to "section 10-7-15" appeared in Code 1943 as "section 15-7-15."

1. Validity and construction.

This section is not void for uncertainty. And legislature may prescribe the mode or method by which cities and towns may exercise their authority to sell, lease or otherwise dispose of their property. McDonald v. Price, 45 U. 464, 146 P. 550.

10-7-17. Opening of bids—Amount to equal appraised value and amount of outstanding bonds.—At the time and place mentioned in such notice all bids received for the property sought to be sold or leased shall be opened

and considered, and the commissioners, city council or trustees shall accept the bid of the highest responsible bidder; provided, that such bid, if for the purchase of the works or plant, is for an amount equal to the appraised value thereof, and in the judgment of the commissioners, city council or board of trustees is an adequate price for the said property; and provided further, that no offer to purchase the works or plant shall be accepted which does not amount to the total outstanding bonds sold for the purpose of constructing the same, together with accumulated interest thereon.

History: L. 1913, ch. 69, § 3; C. L. 1917, § 812; R. S. 1933 & C. 1943, 15-7-17.

1. Validity and construction.

This section is not void for uncertainty. And the legislature may provide the mode or method by or through which the power to sell, lease or dispose of their property may be exercised by cities and towns in this state. McDonald v. Price, 45 U. 464, 146 P. 550.

The "highest responsible bidder" within the meaning of this section is the bidder who will pay the highest amount of service under the terms and conditions proposed by the city or town. McDonald v. Price, 45 U. 464, 146 P. 550.

10-7-18. Disposition of moneys received.—All moneys received from the sale of property as in this article provided shall be kept in a separate fund, and shall not be expended, or mixed with other funds of such city or town, until all bonds sold for the purchase or construction of such plant or works, together with accumulated interest thereon, shall have first been paid; provided, that where the property so sold shall bring an amount in excess of the outstanding bonds issued for the purchase or construction of the property so sold such excess shall be deposited in bank in this state under direction of the board of commissioners, city council or board of trustees at interest, and may not thereafter be expended except for some municipal purpose by authority given by the qualified electors of such city or town at a general or special election called and conducted in the manner set forth in sections 10-7-7 and 10-7-8.

History: L. 1913, ch. 69, § 4; C. L. 1917, § 813; R. S. 1933 & C. 1943, 15-7-18.

Compiler's Note.

The reference in this section to "sections 10-7-7 and 10-7-8" appeared in Code 1943 as "sections 15-7-7 and 15-7-8."

ARTICLE 5

GIFTS TO RAILROADS

Section 10-7-19. Election to authorize—Notice—Ballots.

10-7-19. Election to authorize—Notice—Ballots.—The board of commissioners or city council of any city or the board of trustees of any incorporated town is authorized to aid and encourage the building of railroads by granting to any railroad company for depot or other railroad purposes real property of such city or incoporated town, not necessary for municipal or public purposes, upon such limitations and conditions as the board of commissioners, council or board of trustees may prescribe; provided, however, that no such grant shall be made to any railroad company unless the question of making it has been submitted to the qualified electors of the city or town at the next municipal election, or special

election to be called for that purpose by the board of commissioners, city council or town board. If the question is submitted at a special election, it shall be held as nearly as practicable in conformity with the general election laws of the state. Notice of such election shall be given by publication in some newspaper published or having general circulation in the city or town once a week for four weeks prior thereto, or if there is no such newspaper, then by posting notices. The board of commissioners, city council or town board shall cause ballots to be printed and furnished to the qualified electors, which shall read: "For the proposed grant for depot or other railroad purposes: Yes. No." If a majority of the qualified electors voting thereon shall have voted in favor of such grant, the board of commissioners, city council or town board shall then proceed to convey the property to the railroad company.

History: L. 1901, ch. 49, § 1; C. L. 1907, § 313x; C. L. 1917, § 818; R. S. 1933 & C. 1943, 15-7-19.

Cross-Reference.

Constitutional limitation on aid to railroads, Const. Art. VI, § 31.

1. Construction and application.

Section 10-8-33 does not authorize city council to grant to railroad exclusive right to occupy and use street for hundred years. Knight v. Thomas, 35 U. 470, 101 P. 383.

Grant to railroad of exclusive right to occupy and use street in which city owned fee for one hundred years was granting of interest in and to land itself, constituting real property, and could not lawfully be made without submitting question of making of grant to qualified electors, as provided in this section. Knight v. Thomas, 35 U. 470, 101 P. 383.

Words "real property of such city or incorporated town," as used in this section, include city streets of which the fee is in the city. Knight v. Thomas, 35 U. 470, 101 P. 383.

Collateral References.

Municipal Corporations⇨225(1).
63 C.J.S. Municipal Corporations § 965.

ARTICLE 6

CONTRACTS FOR PUBLIC IMPROVEMENTS

Section 10-7-20. Necessity for contract—Call for bids—Acceptance or rejection.

10-7-20. Necessity for contract—Call for bids—Acceptance or rejection.—Whenever the board of commissioners or city council of any city or the board of trustees of any town shall contemplate making any new improvement to be paid for out of the general funds of the city or town, such governing body shall cause plans and specifications for, and an estimate of the cost of, such improvement to be made. If the estimated cost of such improvement, in case of a city of the first class, shall be less than $6,000, or in a town or a city of the second or third class less than $2,000, such city or town may make such improvement without calling for bids for making the same. If the estimated cost of such proposed improvement shall exceed the amounts above mentioned, the city or town shall, if it shall determine to make such improvement, do so by contract, after publication of notice for at least five days in a newspaper of general circulation printed and published in such city or town; provided, that where no newspaper is printed or published therein such notice shall be posted in at least five public places in such city or town, the notice so posted to remain posted for at least three days; provided further, that when the cost of a

contemplated improvement shall exceed the sum of $6,000 and $2,000, respectively, the same shall not be so divided as to permit the making of such improvement in several parts, except by contract; provided further, that such governing body shall have the right to reject any or all bids presented, and all notices calling for bids shall so state. In case bids are called for as provided in this section and the proposals received shall exceed the estimate of the cost of making the improvement, all shall be rejected and the governing body shall advertise anew in the same manner as before. If after twice advertising as herein provided no bid shall be received that is satisfactory and less than the estimated cost of such improvement, such governing body may proceed under its own direction to make the improvement.

Nothing in this article shall be construed to require bids to be called for or contracts let for the conduct or management of any of the departments, business or property of such city or town, or for lowering or repairing water mains or sewers, or making connections with water mains or sewers, or for grading, repairing or maintaining streets, sidewalks, bridges, culverts or conduits in any city or town.

History: L. 1907, ch. 20, § 1; C. L. 1907, § 313x1; C. L .1917, § 819; L. 1919, ch. 14, § 1; R. S. 1933 & C. 1943, 15-7-20.

Cross-References.

Accounts and publication of costs, 51-3-1 et seq.
Contractors' bonds, 14-1-1 et seq.
Eight hour day, 34-3-1, 34-3-2.
Employment of citizens, 34-12-1 et seq.
Personal interest in contracts, 10-6-38.

1. Construction and application.

General policy of law of Utah is that no contract shall be awarded by any municipality or public corporation for any public improvements except to lowest responsible bidder after publication. Bonneville Irr. Dist. v. Ririe, 57 U. 306, 195 P. 204. This act does not however, require the contract to be let to the lowest responsible bidder. Schulte v. Salt Lake City, 79 U. 292, 299, 10 P. 2d 625.

This section expresses the settled policy of this state that no contract shall be awarded by any city for any public improvement except to the lowest responsible bidder after publication. The purpose of this is to invite competition, to guard against favoritism, improvidence, extravagance, and fraud in awarding contracts, and for the benefit of the taxpayers to secure the best work and supplies at the lowest price practicable. Bohn v. Salt Lake City, 79 U. 121, 138, 8 P. 2d 591, 81 A. L. R. 215, explaining Bonneville Irr. Dist. v. Ririe, 57 U. 306, 195 P. 204, and Barnes v. Lehi City, 74 U. 321, 279 P. 878.

2. Letting contracts.

The court will not consider the power of a city to do work under this section without letting it out to competitive bid, where as a matter of fact the work was so let. Bohn v. Salt Lake City, 79 U. 121, 131, 137, 8 P. 2d 591, 81 A. L. R. 215.

Where there is no statutory limitation upon the power of the proper officers of a city to let contracts for public improvement, such officers have a broad discretion, and courts will not interfere with their control of the matter so long as they do not exceed the power delegated to them, or invade their private rights or act in bad faith or palpably abuse their discretion. Schulte v. Salt Lake City, 79 U. 292, 300, 10 P. 2d 625.

3. Self-liquidating improvements.

Under the provisions of this section which provides that city council, contemplating making of any new improvement to be paid out of general funds of city, must cause plans and specifications to be made, together with estimated cost thereof, and then advertise for bids, does not apply to improvements to be paid for exclusively out of proceeds derived from the improvements, which proceeds are not and do not become part of general funds of city. Barnes v. Lehi City, 74 U. 321, 344, 279 P. 878.

City was not required to advertise and call for bids for construction of electric light and power system under special fund doctrine, this statute having no application thereto. Utah Power & Light Co. v. Provo City, 94 U. 203, 249, 74 P. 2d 1191. (Moffat, J., and Folland, C. J., dissenting.)

4. Protection of subcontractors and laborers.

Though not required by law, city may insert in contract a provision that if contractor fails to pay for labor and material, city may pay same, or withhold sufficient sums to do so, and deduct such sums from amount due contractor. Salt Lake City v. O'Connor, 68 U. 233, 249 P. 810, 49 A. L. R. 941.

5. Estimate of costs.

In order to comply with provision of this section which requires advertising for bids if cost of contemplated improvement exceeds stipulated amount, city commission must have some estimate of such costs before it can determine whether it may make a contract without advertising for bids or whether it will be necessary to advertise. Johnson v. Utah-Idaho Concrete Pipe Co., 118 U. 552, 223 P. 2d 418.

Under this section, there is no particular limitation of the time within which estimate of costs must be submitted to city commission for its consideration, as long as estimate is submitted before bids are opened. Johnson v. Utah-Idaho Concrete Pipe Co., 118 U. 552, 223 P. 2d 418.

6. Letting contract under former law.

Under former provisions it was held that a city of the first class, such as Salt Lake City, could not construct a dam for a water supply without entering into contracts therefor, with notice, as provided, obtaining the approval of the city council, awarding the contract to the lowest responsible bidder. Utah Savings & Trust Co. v. Salt Lake City, 44 U. 150, 138 P. 1165, applying Comp. Laws 1907, § 286, since repealed.

Collateral References.

Municipal Corporations⇨330(1).

63 C.J.S. Municipal Corporations § 1148.

Public improvements, 38 Am. Jur. 246, Municipal Corporations § 559 et seq.

Acceptance by municipality of street improvement as binding on property owners as regards contractor's performance of his obligations, 79 A. L. R. 1107.

Applicability of statute or municipal regulations to contracts for performance of work on land owned or leased by federal government, 127 A. L. R. 827.

Bidder's variation from specifications on bid for public work, 65 A. L. R. 835.

Clause which names specific time period for duration or performance of contract or condition as affecting clause which describes the period in terms other than those of specific time, 128 A. L. R. 1148.

Conclusiveness of certificate or decision of architect or engineer under building or construction contract, 54 A. L. R. 1255, 110 A. L. R. 137.

Conspiracy or combination to prevent actual competition in bids for public work as affecting contract for the work or recovery therefor, 62 A. L. R. 224.

Construction of cost plus contracts, 2 A. L. R. 126, 27 A. L. R. 48.

Delays caused by change in plans or specifications of a public construction contract as coming within "no damage" clause appearing in the contract, 10 A. L. R. 2d 810.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amount to be let to lowest bidder, 53 A. L. R. 2d 498.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract, 27 A. L. R. 2d 917.

Elements bearing directly upon the quality of a contract as affecting the character of one as independent contractor, 20 A. L. R. 684.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law, 69 A. L. R. 697.

Independent contractor, liability for injuries to third persons by defects in completed work, 41 A. L. R. 8, 123 A. L. R. 1197.

Independent contractors, municipal liability for torts of, 25 A. L. R. 426, 52 A. L. R. 1012.

Labor conditions or relations as factor in determining lowest responsible bidder for public contract or as factor in determining whether public contract should be let to lowest bidder, 110 A. L. R. 1406.

Liability of municipal corporation to contractor for mistake in estimates prepared by former's officers or employees, 16 A. L. R. 1131.

Liability of municipality to contractor for mistake of its officers or employees in preparing estimates, 16 A. L. R. 1131.

Measure of damages or amount of recoupment for delay in completing public improvement, in absence of provision for liquidated damages, 51 A. L. R. 1213.

One doing work under a cost plus contract as an independent contractor, or a servant or an agent, 55 A. L. R. 291.

Power of board to make contract extending beyond its own term, 70 A. L. R. 794, 149 A. L. R. 336.

Promise of additional compensation for completing building or construction contract, 25 A. L. R. 1450, 55 A. L. R. 1333, 138 A. L. R. 136.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 A. L. R. 1467.

Requirement that municipal contracts be awarded on competitive bidding as applicable to contracts for public utility (gas, electricity, and water), 128 A. L. R. 168.

Right in submitting proposal for bids on public work to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work, 79 A. L. R. 225.

Right of public authorities to reject all bids for public work or contract, 31 A. L. R. 2d 469.

Right or duty of public authorities to require single bid or to let single contract for entire improvement or for two or more separate improvements, 123 A. L. R. 577.

Rights and remedies of bidder for public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employees, 52 A. L. R. 2d 792.

Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract, 135 A. L. R. 1265.

Validity of contract for material patented or held in monopoly where letting to lowest bidder is required, 77 A. L. R. 702.

What is covered by term "work" in statute relating to bids or proposals for public contracts, 92 A. L. R. 835.

Willful or intentional variation by contractor from terms of contract in regard to material or work as affecting measure of damages, 6 A. L. R. 137.

ARTICLE 7

LEVY OF SPECIAL TAXES BY CITIES AND TOWNS

Section

10-7-21. General right to make improvements.—The board of commissioners or city council of cities and the board of trustees of towns may establish grades and lay out, establish, open, extend and widen any street or alley, and improve, repair, light, grade, pave, curb and gutter, sewer, drain, park and beautify the same; may construct bridges, sidewalks, crosswalks, and driveways from curb to property line, culverts, lighting equipment, sewers and drains; may plant or cause to be planted, set out, cultivated and maintained lawns and shade trees in parking spaces; and may maintain, replace or renew any of such improvements.

History: R. S. 1898 & C. L. 1907, § 255; C. L. 1917, § 673; L. 1921, ch. 15, § 1; R. S. 1933 & C. 1943, 15-7-21.

Cross-References.

County sewers, 17-6-1 et seq.
Excess levy forbidden, 59-9-8 et seq.
Tax levies generally, 59-9-7.

1. Construction and effect.

This section corrects a serious omission in the former statute. Both cities and towns, it would seem, may now levy and collect a special tax to defray the cost of paving streets as well as sidewalks. Woodring v. Straup, 45 U. 173, 143 P. 592.

This article carries out the settled policy of this state with respect to assessment and collection of municipal taxes. The Best Foods, Inc. v. Christensen, 75 U. 392, 400, 285 P. 1001.

2. Liquidation of improvements.

Cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter, or otherwise improve streets, and hence city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

3. Effect where incorporated in city charter.

The special improvement laws (10-7-21 to 10-7-56, 10-7-61 to 10-7-64) although incorporated by reference in a city charter will not permit city to avoid obligation under another section of the charter requiring that an ordinance authorizing the issuance of bonds be in effect before the making of a construction contract. Carter v. Provo City, 6 U. (2d) 154, 307 P. 2d 906.

Collateral References.

Municipal Corporations⇐265.
63 C.J.S. Municipal Corporations § 1036.
Character and benefit of improvements, 48 Am. Jur. 580, Special or Local Assessments, § 21 et seq.
Taxation and special assessments, 38 Am. Jur. 67, Municipal Corporations, § 381 et seq.

Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense, 134 A. L. R. 895.

Cotenancy as factor in determining representation of property owners in petition for public improvement, 3 A. L. R. 2d 127.

Elimination of railroad grade crossing as local improvement for which property specially benefited may be assessed, 111 A. L. R. 1222.

Improvement district, municipal aid for, 50 A. L. R. 1208.

Off-street public parking facilities, 8 A. L. R. 2d 373.

Parking place as public improvement which may be established or supported in whole or in part by special assessment, 8 A. L. R. 2d 373.

Power of municipality to aid improvement district organized within its own limits, 50 A. L. R. 1208.

Power to remit, release, or compromise assessments, 28 A. L. R. 2d 1425.

Property interest as disqualifying one to participate in proceeding to establish public improvement, 11 A. L. R. 193.

Underground conduits for electric wires as local improvements supporting special assessments, 66 A. L. R. 1389.

What constitutes reconstruction or the like, as distinguished from repair, of pavement, 41 A. L. R. 2d 613.

10-7-22. Abutting property to bear expense.—To defray the cost and expense of such improvements or any of them, the governing body of

cities and towns may levy and collect special taxes and assessments upon the blocks, lots or parts thereof and pieces of ground fronting or abutting upon or adjacent to the street or alley thus in whole or in part opened, widened or improved, or which may be affected by or specially benefited by any of such improvements, either to the full depth of such blocks, lots or parts thereof or pieces of ground, or to such depth as may be determined by such governing body, and for the purpose of providing for such improvements or any of them it shall have power to create improvement districts, and to contract for the making of such improvements in such districts; such contract, except for opening, widening or extending streets or alleys, to be let to the lowest responsible bidder for the kind of material or service chosen; provided, that the above provisions shall not apply to the ordinary repairs of pavement, sewer, drains, curb and gutter or sidewalks; and provided further, one-half the cost of bringing streets or alleys to the established grade shall be paid by the city or town.

History: R. S. 1898 & C. L. 1907, § 256; C. L. 1917, § 674; L. 1921, ch. 15, § 1; R. S. 1933 & C. 1943, 15-7-22.

1. Construction and application.

There is a distinction between taxes and special assessments, and word "taxation" does not include the latter. Wey v. Salt Lake City, 35 U. 504, 101 P. 381.

In determining whether the legislature has granted to cities the power to levy and collect special taxes, the statutes under which it is claimed such power is conferred are strictly construed. Woodring v. Straup, 45 U. 173, 143 P. 592.

The method provided by this section for paying cost of paving streets is not exclusive, and under 10-8-8, city may use general funds or any part thereof for pavement of its streets. Booth v. Midvale City, 55 U. 220, 184 P. 799.

2. Extent of authority to levy special assessments.

Admittedly municipal authorities cannot levy a special assessment for an improvement without express legislative permission. Pettit v. Duke, 10 U. 311, 37 P. 568.

It would not seem that sprinkling of streets is included in the enumeration of instances in which local assessments may be levied. It is not an improvement or a permanent improvement. Pettit v. Duke, 10 U. 311, 37 P. 568.

Formerly towns were not given power to levy a special tax to defray cost of paving a street; the power was confined to sidewalks; and this was true even though the amount which could be raised by the general tax was admittedly insufficient to pave the street. Section 10-7-21 would seem to correct this. Woodring v. Straup, 45 U. 173, 143 P. 592.

Rights of municipal authorities under this and preceding section (10-7-21) to make a proposed local improvement continue to exist unless and until defeated by protests of owners of two-thirds of frontage under 10-7-40, and frontage of owners withdrawing protests before expiration of filing time for protests, cannot be computed in determining frontage protesting improvement. Salt Lake & U. R. Co. v. Payson City, 66 U. 521, 244 P. 138.

Under their present statutory authority, cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter, or otherwise improve streets, and hence city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

3. Limitation on amount.

No special assessment for local improvements can exceed the benefits, as, for example, assessment for laying a sidewalk. Lannan v. Waltenspiel, 45 U. 564, 571, 147 P. 908.

4. Contract between city and county.

City had power to enter into contract with county for pavement of street whereby they would jointly construct pavement with city paying one-third of cost of improvement and county the remaining expense. Booth v. Midvale City, 55 U. 220, 184 P. 799.

Collateral References.

Municipal Corporations⇨429.

63 C.J.S. Municipal Corporations § 1349.

Lands abutting or in proximity to im-

provement, 48 Am. Jur. 667, Special or Local Assessments § 119.

Amount of compensation of attorney for services as to assessment for public improvement in absence of contract or statute fixing amount, 56 A. L. R. 2d 195.

Cemetery property and cemetery lots as subject to assessment for public improvement in absence of express exemption, 71 A. L. R. 322.

Constitutionality of classification of streets as regards source of payment for improvements, 127 A. L. R. 1090.

Cotenancy as factor in determining representation of property owners in petition for public improvement, 3 A. L. R. 2d 127.

Diversion of traffic into business district by opening new route as special benefit for which assessment may be made, 96 A. L. R. 1380.

Elimination of railroad grade crossing as local improvement for which property specially benefited may be assessed, 111 A. L. R. 1222.

Establishment of grade as jurisdictional requisite of improvement of street at expense of property benefited, 79 A. L. R. 1317.

Homestead as subject to assessment for local improvements, 79 A. L. R. 712.

Impairment of obligation of contract within constitutional provision as applied to rights and remedies of owners of property subject to assessment for local improvements, 100 A. L. R. 164.

Liability of abutting property to assessment for street paving as affected by character or extent of traffic, 73 A. L. R. 1295.

Power of municipality or other governmental agency to make contract or covenant releasing public property from special assessment, 47 A. L. R. 2d 1185.

Power to include in special assessment, interest accruing during construction of public improvements and running until special assessments become due, 58 A. L. R. 2d 1363.

Power to remit, release, or compromise assessments, 28 A. L. R. 2d 1425.

Superiority of special or local assessment lien over earlier private lien or mortgage, where statute creating such special lien is silent as to superiority, 75 A. L. R. 2d 1121.

Tax sale as freeing property from possibility of further assessments for benefit to land, 11 A. L. R. 2d 1133.

What constitutes reconstruction or the like, as distinguished from repair, of pavement, 41 A. L. R. 2d 613.

10-7-23. Assessment of special taxes, how made—Payments—Delinquent taxes—Sale—Certificate, contents.—The assessment of special taxes for special improvements shall be made as follows: That part of the cost of engineering, inspection, publishing and mailing notices, making the tax levy, and any incidental costs upon any such improvement above ten per cent of the contract price of such improvement shall be paid out of the general funds of the city or town. The total cost of the improvement, which shall include the interest on interim warrants and the total contract price, plus an amount equal to but not exceeding ten per cent thereof to cover the actual cost of engineering, inspection, publishing and mailing notices and making the levy, shall be levied at one time upon the property, and shall become due in not more than ten equal annual installments as may be provided in the ordinance levying the tax, with interest on the whole sum unpaid at not to exceed seven per cent per annum until due and thereafter at the rate of ten per cent per annum until paid, payable annually; provided, that where the assessment is for light service or park maintenance interest shall be charged only from and after the due date of each installment, which date for the first installment shall be fifteen days after the date on which the levy becomes effective. One or more of such installments in the order payable, or the whole tax, may be paid without interest within fifteen days after such ordinance becomes effective. All sums so collected shall be paid to the contractor having the contract to make the improvement to pay for which such tax is levied, less not ex-

ceeding ten per cent to be retained by the city or town on account of levying, engineering, inspecting, publishing notices and other expenses by the city or town incident to such improvement and the levy and collection of such tax. One or more installments in the order in which they are payable, or the whole special tax, may be paid after said fifteen days and before the first installment becomes due by paying the same with interest from the date of levy to the date such first installment is due. One or more installments in the order in which they are made payable, or the whole special tax, may be paid on the day any installment becomes due by paying the amount thereof and interest to the date of payment. Default in the payment of any such installment of principal or interest when due shall cause the whole of the unpaid principal or interest to become due and payable immediately, and the whole amount of the unpaid principal shall thereafter draw interest at the rate of ten per cent per annum until paid, but at any time prior to the date of sale or foreclosure the owner may pay the amount of all unpaid installments past due, with interest at the rate of ten per cent per annum to date of payment on the delinquent installments, and all accrued costs, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not occurred. In case any such tax shall become or has become delinquent, and the property subject thereto has been or shall be sold to such city or town therefor, no redemption of such property shall be permitted except upon payment of the full amount due, interest and taxes paid by such city or town and accrued costs and redemption fees, unless in the judgment of the board of commissioners or city council of such city or board of trustees of such town the interest of the city or town will be subserved by accepting a less sum in settlement therefor. After sale, if tax sale certificates thereon have issued to the city or town, such city or town may provide by ordinance for payment in installments of unpaid principal, interest and all costs and charges, and for giving credit for the amounts so paid against the amounts so due; provided, that the installment shall be in such amount as will discharge the indebtedness within not more than the period in which the right to redeem from such tax sale shall expire. Credit shall be given for each installment as paid, and interest thereby reduced proportionally, and on all unpaid installments interest shall be paid and charged at the rate of ten per cent per annum. In case any owner electing to take advantage of the provisions of such ordinance shall fail to make payment of such installments when due, the right of the city or town to receive a tax deed for such real estate, shall not be impaired, nor shall the owner be entitled to receive any refund of any amounts so paid. Such ordinance may also provide for the payment with each installment of a sum, not exceeding $1 per installment, to cover the additional bookkeeping expense incurred in connection therewith, and not to be credited against the delinquent tax. In case of deficiencies, omissions, errors or mistakes in making such assessment or levy in respect to the total cost of the improvement, the city commission, city council or board of town trustees shall make a supplemental assessment and levy to supply such deficiencies, omissions, errors or mistakes.

History: R. S. 1898 & C. L. 1907, § 258; C. L. 1917, § 676; L. 1931, ch. 25, § 1; R. S. 1933 & C. 1943, 15-7-23.

1. Construction and application.

This section would seem to limit the items and amounts that should be included in the contract price. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 590, 33 P. 2d 181.

2. Improvement bonds as medium of payment.

Cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter, or otherwise improve streets, and hence city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

3. Acceleration of payment.

Where a tax or assessment is made payable in installments, legislature may confer power on city by ordinance or otherwise to declare the whole tax or assessment due on delinquency of an installment. But unless this power is conferred by statute, it does not exist. Stinson v. Godbe, 48 U. 444, 160 P. 280.

4. Mandamus.

Under former legislation it was held that mandamus would not lie to compel sale of property before whole tax became delinquent and remained unpaid. The reason was partly because no such duty was clearly imposed, and also because increased interest upon delinquency sufficiently protected person concerned. Stinson v. Godbe, 46 U. 468, 150 P. 967.

Collateral References.

Municipal Corporations⇐456(1).

63 C.J.S. Municipal Corporations § 1402.

Taxation and special assessments, 38 Am. Jur. 67, Municipal Corporations § 381 et seq.

Constitutionality of statute permitting payment of taxes in installments, 101 A. L. R. 1335.

Effect of certificate, statement (or refusal thereof), or error of tax collector or other public officer regarding other unpaid assessments against specific property, 21 A. L. R. 2d 1273.

Eligibility of public officer or employee to appointment as member of body to lay assessments for public improvement, 71 A. L. R. 540.

Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 40 A. L. R. 1352, 42 A. L. R. 1185.

Lack of or defects in petition of property owners for local improvement as affecting validity or enforcement of assessment, 95 A. L. R. 116.

Manner of enforcing special assessments against public property, 150 A. L. R. 1394.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment, 63 A. L. R. 1179.

Power and duty to include in periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid, 95 A. L. R. 1275.

Prior judgment as precluding reassessment for public improvement, 60 A. L. R. 513.

Qualification of owner of property affected by public improvement to act in making assessment, 2 A. L. R. 1207.

Statute authorizing or requiring reassessment for public improvement when original assessment is invalid or void as applicable when proceedings leading to original assessment were without jurisdiction, 83 A. L. R. 1190.

Use of credit of municipality in event of inability to collect or insufficiency of special assessment, 70 A. L. R. 176, 135 A. L. R. 1287.

10-7-24. Contracts let and assessment when contributions are made.—Where donations or contributions for labor and materials for constructing a portion of any special improvement provided for in this article are made by any individual, corporation, state or the United States, a contract or contracts may be let for that portion of labor and materials necessary to complete said improvement and assessments against the property in the improvement district for the interest on interim warrants and the amount of said contract or contracts, plus an amount equal to but not exceeding ten per cent of the amount of said contract or contracts to cover the actual cost of engineering, inspection, publishing and mailing notices, and

making the levy, shall be levied and the payments made as provided in section 10-7-23; provided, that when equipment of the city or town is used in making said special improvement there may be included in said assessment the cost of furnishing such equipment and the city or town reimbursed for said cost.

History: R. S. 1933, 15-7-23x, added by L. 1937, ch. 17, § 1; C. 1943, 15-7-23x.

Compiler's Note.

The reference in this section to "this article" appeared in the act as "Article 7, Chapter 7, Title 15, Revised Statutes of Utah, 1933," and the reference to "section 10-7-23" appeared as "section 15-7-23, Revised Statutes of Utah, 1933."

Collateral Reference.

Amount of compensation of attorney for services as to assessment for public improvement in absence of contract or statute fixing amount, 56 A. L. R. 2d 195.

10-7-25. Street improvements—Assessments.—The cost of paving, macadamizing or repaving of the streets and alleys within any paving district, except the intersection of streets and space opposite alleys within such district, shall be assessed upon the lots and lands abutting upon the streets and alleys in such district.

History: R. S. 1898 & C. L. 1907, § 257; C. L. 1917, § 675; R. S. 1933 & C. 1943, 15-7-24.

Cross-Reference.

Assessment according to frontage or area, 10-7-42.

1. Construction and application.

This section would seem to give both cities and towns authority to levy a special tax to defray cost of paving a street. See Woodring v. Straup, 45 U. 173, 143 P. 592.

The method provided by this section for paying cost of paving streets is not exclusive, and under 10-8-8 city may use general funds or any part thereof for pavement of its streets. Booth v. Midvale City, 55 U. 220, 184 P. 799. But cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter or otherwise improve streets, and hence city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

Collateral References.

Constitutionality of classification of streets as regards source of payment for improvements, 127 A. L. R. 1090.

Liability of abutting property to assessment for street paving as affected by character or extent of traffic, 73 A. L. R. 1295.

What constitutes reconstruction or the like, as distinguished from repair, of pavement, 41 A. L. R. 2d 613.

10-7-26. Intersections and street railway tracks—Assessments.—The cost of paving, macadamizing or repaving the intersections of streets and spaces opposite alleys in any paving district shall be paid by the city or town as hereinafter provided. Nothing herein contained shall be construed to exempt any street railway company from keeping every portion of every street and alley used by it and upon or across which its tracks shall be constructed at or near the grade of such streets in good and safe condition for public travel, but it shall keep the same planked, paved, macadamized or otherwise in such condition for public travel as the governing body of the city or town may from time to time direct, keeping the plank, pavement or other surface of the street or alley level with the top of the rails of the track. The portions of the streets or alleys to be so kept and maintained by all such street railway companies shall include all the space between their different rails and tracks and also a space outside of the outer rail of each outside track of at least two feet in width, and

the tracks herein referred to shall include not only the main tracks but also all sidetracks, crossings and turnouts constructed for the use of such street railways.

History: R. S. 1898 & C. L. 1907, § 259; C. L. 1917, § 677; R. S. 1933 & C. 1943, 15-7-25.

Collateral References.

Street Railroads⇐37.
83 C.J.S. Street Railroads § 112.

10-7-27. Street railway companies to restore streets.—Every street railway company shall at its own expense restore the pavement, including the foundation thereof, of every street disturbed by it in the construction, reconstruction, removal or repair of its tracks, to the same condition as before the disturbance thereof, to the satisfaction of the governing body having charge of such street. The obligation imposed hereby shall, in cities other than cities of the first class, be in lieu and substitution of any and all other obligations of any such company to pave, repave or repair any street, or to pay any part of the cost thereof, and may be enforced in the same manner as similar obligations are or may be enforced under the laws of this state. Nothing herein contained shall be considered to relieve any such company from the repayment of any money which has heretofore been advanced or expended by any city for any paving heretofore done under or by virtue of a specific contract or agreement made and entered into between the board of commissioners or the city council of any city and such company providing for the repayment thereof, but the obligation for such repayment shall be and remain enforceable as if this section had not been passed.

History: L. 1927, ch. 77, § 1; R. S. 1933 & C. 1943, 15-7-26.

Collateral References.

Assessment of parkway occupied by street railway company for street improvement, 10 A. L. R. 164.

Assessment of railroad right of way for local improvements, 37 A. L. R. 219, 82 A. L. R. 425.

Assessment of right of way other than that of railroad or street railway for street or local improvement, 58 A. L. R. 127.

Liability of railroad or street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder, 29 A. L. R. 679.

10-7-28. Liability of abutting property.—When any street of any city, other than cities of the first class, occupied by the tracks of a streetcar company is to be paved or repaved, the board of city commissioners or the mayor and city council of such city is vested with authority to assess the entire cost of paving or repaving such street, including the portion occupied by such tracks, against the property abutting on said street in the manner provided by law, except the intersections of streets and the spaces opposite alleys.

History: L. 1927, ch. 77, § 2; R. S. 1933 & C. 1943, 15-7-27.

Collateral References.

Municipal Corporations⇐465.
63 C.J.S. Municipal Corporations § 1417.

Elimination of railroad grade crossing as local improvement for which property specially benefited may be assessed, 111 A. L. R. 1222.

10-7-29. Railway companies to repave streets.—All railway companies shall be required to pave or repave at their own cost all the space between their different rails and tracks and also a space two feet wide outside of

the outer rails of the outside tracks in any city or town, including all sidetracks, crossings and turnouts used by such companies. Where two or more companies occupy the same street or alley with separate tracks each company shall be responsible for its proportion of the surface of the street or alley occupied by all the parallel tracks as herein required. Such paving or repaving by such railway companies shall be done at the same time and shall be of the same material and character as the paving or repaving of the streets or alleys upon which the track or tracks are located, unless other material is specially ordered by the municipality. Such railway companies shall be required to keep that portion of the street which they are herein required to pave or repave in good and proper repair, using for that purpose the same material as the street upon which the track or tracks are laid at the point of repair or such other material as the governing body of the city may require and order; and as streets are hereafter paved or repaved street railway companies shall be required to lay in the best approved manner a rail to be approved by the governing body of the city. The tracks of all railway companies when located upon the streets or avenues of a city or town shall be kept in repair and safe in all respects for the use of the traveling public, and such companies shall be liable for all damages resulting by reason of neglect to keep such tracks in repair, or for obstructing the streets. For injuries to persons or property arising from the failure of any such company to keep its tracks in proper repair and free from obstructions such company shall be liable and the city or town shall be exempt from liability. The word "railway companies" as used in this section shall be taken to mean and include any persons, companies, corporations or associations owning or operating any street or other railway in any city or town.

History: R. S. 1898 & C. L. 1907, § 266; C. L. 1917, § 684; R. S. 1933 & C. 1943, 15-7-28.

1. Rights as abutting owner.

Railroad company owning lots abutting on street included within proposed paving district has right to file its protest, as provided in 10-7-40, to proposed improvement same as any other private owner of property fronting on street. Cave v. Ogden City, 51 U. 166, 169 P. 163.

2. Duty to repair streets.

In action against city for injury to pedestrian through negligence of defendant in leaving obstructions in its streets, a railway company located upon the streets cannot be made liable under this section, where there is no testimony to show that railway track was out of repair, or that there was any obstruction upon it at time of accident. Naylor v. Salt Lake City, 9 U. 491, 35 P. 509, applying Session Laws 1890, p. 59, § 2.

3. Revocation of franchise.

This section was applied in Union Pac. R. Co. v. Public Service Comm., 103 U. 186, 134 P. 2d 469, which was a writ of prohibition issued upon the application of the Union Pacific Railroad Company to test right of Utah public service commission to investigate right of said railroad company to remove certain railway tracks and trolley poles from Second Street in Ogden. It was held that as grantee of franchise had violated covenants thereof, Ogden City might revoke franchise and, in accordance with 10-8-82, require that grantee's tracks be taken up and removed.

Collateral References.

Street Railroads⇐38.
83 C.J.S. Street Railroads § 112.

Assessment of railroad right of way for local improvements, 37 A. L. R. 219, 82 A. L. R. 425.

Assessment of right of way other than that of railroad or street railway for street or local improvement, 58 A. L. R. 127.

Excessiveness or unfairness of assessment for highway improvement on property of railroad company, 48 A. L. R. 497.

Liability of railroad or street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder, 29 A. L. R. 679.

10-7-30. Failure to pay for repairs—Lien on company's property.—In the event of the refusal of any such company to pave, repave or repair as required herein when so directed, upon the paving or repaving of any street upon which its track is laid, the municipality shall have power to pave, repave or repair the same, and the cost and expense of such paving, repaving or repairing may be collected by levy and sale of any property of such company in the same manner as special taxes are now or may be collected. Special taxes for the purpose of paying the cost of any such paving or repaving, macadamizing or repairing of any such railway may be levied upon the track, including the ties, iron, roadbed, right of way, sidetracks and appurtenances, and buildings and real estate belonging to any such company and used for the purpose of such railway business all as one property, or upon such parts of such track, appurtenances and property as may be within the district paved, repaved, macadamized or repaired, and shall be a lien upon the property levied upon from the time of the levy until satisfied. No mortgage, conveyance, pledge, transfer or encumbrance of any such property or of any rolling stock or personal property of any such company, created or suffered by it after the time when any street or part thereof upon which any railway shall have been laid shall have been ordered paved, repaved, macadamized or repaired shall be made or suffered except subject to the lien of such special taxes, if such levy is in contemplation.

History: R. S. 1898 & C. L. 1907, § 267; C. L. 1917, § 685; R. S. 1933 & C. 1943, 15-7-29.

10-7-31. Sale of property to satisfy claims for special taxes.—The city treasurer shall have the power and authority to seize any personal property belonging to any such company for the satisfaction of any such special taxes when delinquent, and to sell the same upon advertisement and in the same manner as constables are now or may be authorized to sell personal property upon execution; but failure so to do shall in no wise affect or impair the lien of the tax or any proceeding allowed by law for the enforcement thereof. The railroad track or any other property upon which such special taxes shall be levied, or so much thereof as may be necessary, may be sold for the payment of such special taxes in the same manner and with the same effect as real estate upon which special taxes are levied may be sold.

History: R. S. 1898 & C. L. 1907, § 268; C. L. 1917, § 686; R. S. 1933 & C. 1943, 15-7-30.

Cross-Reference.

Executions generally, Rules of Civil Procedure, Rule 69.

10-7-32. Actions to recover taxes.—It shall also be competent for any municipality to bring a civil action against any party owning or operating any such railway liable to pay such taxes to recover the amount thereof, or any part thereof, delinquent and unpaid, in any court having jurisdiction of the amount, and obtain judgment and have execution therefor, and

no property, real or personal, shall be exempt from any such execution; provided, that real estate shall not be levied upon by execution except by execution out of the district court on judgment therein, or transcript of judgment filed therein, as is now or hereafter may be provided by law. No defense shall be allowed in any such civil action except such as goes to the groundwork, equity and justice of the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such special tax shall be shown to be invalid, unjust or inequitable, judgment shall be rendered for such amount as is just and equitable.

History: R. S. 1898 & C. L. 1907, § 269; C. L. 1917, § 687; R. S. 1933 & C. 1943, 15-7-31.

10-7-33. Delinquent taxes—Installment payments—Election and waiver.—It shall be competent for the governing body, upon the written application of any company owning any such railway, to provide that such special taxes shall become delinquent and be payable in installments as in case of taxes levied upon abutting real estate as herein provided, but such application shall be taken and deemed a waiver of any and all objections to such taxes and the validity thereof. Such application shall be made at or before the final levy of such taxes.

History: R. S. 1898 & C. L. 1907, § 270; C. L. 1917, § 688; R. S. 1933 & C. 1943, 15-7-32.

Collateral Reference.

Constitutionality of statute permitting payment of taxes in installments, 101 A. L. R. 1335.

10-7-34. Water, gas and sewer connections to be made in advance.—The governing body shall in any paving district before the work of paving or repaving is done therein require water, gas and sewer connections to be made under such regulations and at such distances from the street mains to the line of the property abutting upon the street ordered paved or repaved as may be prescribed by ordinance, and shall require that such water pipe connections may be made by any waterworks company owning the water pipe main, and that such gas pipe connections may be made by any person or company owning the gas pipe main. And upon neglect or failure of the water or gas companies to do the same the governing body may cause the same to be done, and the cost thereof shall be deducted from any indebtedness of the city to such companies, and no bills shall be paid to such companies by the city until all such expense for pipe laying shall have been liquidated. The governing body shall also have power at any time to assess the cost of any sewer connections, and of any water connections when the city owns the water and water pipe main, to such depth as it shall deem just and equitable, upon the property opposite such connection.

History: R. S. 1898 & C. L. 1907, § 271; C. L. 1917, § 689; R. S. 1933 & C. 1943, 15-7-33.

Collateral References.

Municipal Corporations⇐269(2).
63 C.J.S. Municipal Corporations § 1044.

10-7-35. Paving—Bond issues for.—For the purpose of paying the cost of paving, macadamizing or repaving the streets and alleys in any paving district, exclusive of the intersections of streets and spaces opposite alleys

therein, the governing body may by ordinance cause to be issued bonds of the city or town to be called "District Paving Bonds of district number....," payable in not exceeding ten years from date, and to bear interest payable annually at not exceeding the rate of six per cent per annum, and in such case it shall also provide that such special taxes and assessments shall constitute a sinking fund for the payment of such bonds and interest. Such bonds shall not be sold for less than their par value. The entire cost of paving, repaving or macadamizing any streets, avenues or alleys properly chargeable to any blocks, lots or lands, or part thereof, within any such paving district may be paid by the owner of such lots or lands within fifteen days from the levy of such special taxes, and thereupon such lots or lands shall be exempt from any lien or charge therefor.

History: R. S. 1898 & C. L. 1907, § 260; C. L. 1917, § 678; R. S. 1933 & C. 1943, 15-7-34.

Collateral References.

Municipal Corporations⇨907.

64 C.J.S. Municipal Corporations § 1902.

Paving, 48 Am. Jur. 598, Special or Local Assessments § 41.

For A. L. R. annotations relative to bonds generally, see notes appended to 10-8-6.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A. L. R. 190.

Printing, lithographing, or other mechanical signature on public bonds, coupons or other public pecuniary obligation, 94 A. L. R. 768.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 A. L. R. 1018.

Provision of bonds, coupons or other obligations of municipal or political body or of statute or ordinance under which they are issued, that they will be accepted in payment of taxes, validity and effect of, 100 A. L. R. 1339.

Right to call governmental bonds in advance of their maturity, 109 A. L. R. 988.

Sale of bonds at less than par or face value, 91 A. L. R. 7, 162 A. L. R. 396.

10-7-36. Municipal paving bonds—Amount.—Whenever the governing body deems it expedient it shall have power for the purpose of paying the cost of paving, repaving or macadamizing the intersections of streets and spaces opposite alleys in the city or town to issue bonds of the city or town to run not more than twenty years, and to bear interest payable semi-annually at a rate not exceeding six per cent per annum, to be called "Paving Bonds." Such bonds shall not be sold for less than their par value, and the proceeds thereof shall be used for no other purpose than paying the cost of such paving, repaving or macadamizing. The aggregate amount of such bonds issued in any one year shall not exceed the sum of $100,000. If in any such city or town there shall be any real estate not subject to assessment of special taxes for paving purposes, the governing body shall have the power to pave in front of the same, and to pay the cost thereof that would otherwise be chargeable on such real estate in the same manner as herein provided for the paving of intersections of streets.

History: R. S. 1898 & C. L. 1907, § 261; C. L. 1917, § 679; R. S. 1933 & C. 1943, 15-7-35.

Collateral References.

For A. L. R. annotations relative to bonds generally, see notes appended to 10-8-6.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A. L. R. 190.

Printing, lithographing or other mechanical signature on public bonds, coupons or other public pecuniary obligation, 94 A. L. R. 768.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 A. L. R. 1018.

Provision of bonds, coupons or other obligations of municipal or political body, or of statute or ordinance under which they are issued, that they will be accepted in payment of taxes, validity and effect of, 100 A. L. R. 1339.

Right to call governmental bonds in advance of their maturity, 109 A. L. R. 988.

Sale of bonds at less than par or face value, 91 A. L. R. 7, 162 A. L. R. 396.

10-7-37. Curbing and guttering—Bond issues for.—Whenever curbing, or curbing and guttering, is done upon any street in any paving district in which paving has been ordered, and the governing body shall deem it expedient so to do, it shall have power and authority for the purpose of paying the cost of such curbing and guttering to cause to be issued bonds of the municipality, to be called "Curbing and Guttering Bonds of paving district number....," payable in not exceeding ten years from date, and to bear interest payable annually not exceeding the rate of six per cent per annum. In such case the governing body shall assess at one time the total cost of such curbing and guttering, or curbing, as the case may be, upon the property abutting or adjacent to the portion of the street so improved according to special benefits; such assessment to become delinquent the same as the assessment of special taxes for paving purposes, and to draw the same rate of interest and be subject to the same penalties, and it may be paid in the same manner as special taxes for paving purposes. Such bonds shall not be sold for less than their par value. The special taxes so assessed shall constitute a sinking fund for the payment of such bonds and interest.

History: R. S. 1898 & C. L. 1907, § 263; C. L. 1917, § 681; R. S. 1933 & C. 1943, 15-7-36.

Collateral References.

For A. L. R. annotations relative to bonds generally, see notes appended to 10-8-6.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 A. L. R. 220.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A. L. R. 190.

Printing, lithographing or other mechanical signature on public bonds, coupons or other public pecuniary obligation, 94 A. L. R. 768.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 A. L. R. 1018.

Provision of bonds, coupons or other obligations of municipal or political body, or of statute or ordinance under which they are issued, that they will be accepted in payment of taxes, validity and effect of, 100 A. L. R. 1339.

Right to call governmental bonds in advance of their maturity, 109 A. L. R. 988.

Sale of bonds at less than par or face value, 91 A. L. R. 7, 162 A. L. R. 396.

10-7-38. Bonds required to be within debt limit.—Nothing in this article shall be construed or held to authorize any city or town to issue its bonds, either as district bonds for paving the streets, or for paving street intersections, or spaces opposite alleys, or for any purpose whatever to any amount beyond the limit of the bonded indebtedness fixed by law for such municipality.

History: R. S. 1898 & C. L. 1907, § 272; C. L. 1917, § 690; R. S. 1933 & C. 1943, 15-7-37.

Cross-Reference.

Constitutional debt limit, Const. Art. XIV.

Collateral References.

Municipal Corporations⇨916.

64 C.J.S. Municipal Corporations § 1912.

For A. L. R. annotations relative to debt limitation generally, see notes appended to Const. Art. XIV, § 4.

Allowance to contractor for extras in accordance with provisions of contract made before debt limit was reached, as creation of indebtedness within meaning of debt limit provisions, 96 A. L. R. 397.

Constitutional or statutory debt limit as affected by existence of separate political units with identical or overlapping boundaries, 94 A. L. R. 818.

Constitutional or statutory provision limiting state or municipal indebtedness or taxation or regulating issuance of bonds as affecting bonds or other obligations authorized but not delivered prior to adoption or effective date of the provision, 109 A. L. R. 961.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness, 146 A. L. R. 604.

Estoppel by recitals in bond to set up violation of debt limit, 86 A. L. R. 1057, 158 A. L. R. 938.

Existing sinking fund as a factor in determining whether indebtedness or proposed indebtedness of municipality or other political subdivision exceeds constitutional or statutory limit, 125 A. L. R. 1393.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval of voters, see 97 A. L. R. 442.

Installments payable under continuing service contract as present indebtedness within organic limitation of municipal indebtedness, 103 A. L. R. 1160.

Lease of property with option to purchase as evasion of debt limit, 71 A. L. R. 1318, 145 A. L. R. 1362.

Liability for tort or judgment based on tort as within constitutional or statutory limitation on municipal indebtedness or tax rate for municipal purposes, 94 A. L. R. 937.

Municipal debt limit as affected by obligations to municipality, 105 A. L. R. 687.

Obligation for local improvements as within debt limit, 33 A. L. R. 1415.

Obligation to which money is appropriated at time of its creation as indebtedness within limitation, 92 A. L. R. 1299, 134 A. L. R. 1399.

10-7-39. Attack on tax—Payment under protest.—No such special tax shall be declared void, nor shall any such assessment or part thereof be set aside, in consequence of any error or irregularity committed or appearing in any of the proceedings under this article; but any party feeling aggrieved by any such special tax, assessment or proceeding may pay the special taxes assessed or levied upon his property, or such installments thereof as may be due, at any time before the same shall become delinquent, under protest and with notice in writing to the city or town treasurer that he intends to sue to recover the same, which notice shall particularly state the alleged grievance and grounds thereof. Whereupon such party shall have the right to bring a civil action within sixty days thereafter, but not later, to recover so much of the special taxes paid as he shall show to be illegal, inequitable and unjust, which remedy shall be exclusive; the costs to follow the judgment to be apportioned by the court as may seem proper. The treasurer shall promptly report all such notices to the governing body for such action as may be proper. No court shall entertain any complaint that the party was authorized to make, but did not make, to the governing body sitting as a board of equalization, or any complaint not specified in said notice fully enough to advise the municipality of the exact nature thereof, or any complaint that does not go to the equity and justice of the tax. The burden of proof to show such tax or part thereof invalid, inequitable or unjust shall rest upon the party who brings such suit. And in any instance where such special tax, or the levy or assessment or notice thereof, or any step or proceeding

affecting or concerning the same, is annulled, set aside or declared void, either in whole or in part, by any court or in any proceeding whatsoever, at any time after a contract for the improvement to be paid for by special tax is let or entered into, or at any time after work on the improvement has begun, the governing body may by ordinance make a new levy of such tax to the same amount and extent as such original tax was declared invalid or was annulled, whether such tax was held void for jurisdictional or other defects or irregularities. No notice of such ordinance need be given, and no protest against the same need be considered.

History: R. S. 1898, § 264; L. 1905, ch. 74, § 1; C. L. 1907, § 264; C. L. 1917, § 682; R. S. 1933 & C. 1943, 15-7-38.

Compiler's Note.

Analogous former statute, see § 1, ch. 41, Laws 1890.

1. Construction and application.

Former section did not apply to attempted assessment of exempt property, and suit to annul such assessment could be maintained. Wey v. Salt Lake City, 35 U. 504, 507, 101 P. 381.

Former statute held to have applied only where errors, irregularities, overvaluations, or other defects were not jurisdictional; that, where city council did not have jurisdiction to levy tax, taxpayers were not required to proceed under statute to recover sums paid, and that, where tax was wholly void for council's lack of jurisdiction to levy it, statute and its remedies had no application. Ogden City v. Armstrong, 168 U. S. 224, 42 L. Ed. 444, 18 S. Ct. 98, affirming, on city's appeal, 12 U. 476, 43 P. 119, as to one of appellees and dismissing appeal, for want of jurisdiction, as to other appellees.

2. Actions to recover special tax.

Assumpsit for money had and received held proper remedy for recovery from city of void sprinkling tax paid under protest and received by city. Raleigh v. Salt Lake City, 17 U. 130, 53 P. 974.

Where city took deed to strip of property in bad faith for purpose of making landowner abutting owner, landowner could maintain action to annul and enjoin collection of special improvement tax, since he was not abutting owner, and hence, his property was not subject to assessment, and contention that he was compelled to pursue remedy under this section held without merit. Davidson v. Salt Lake City, 81 U. 203, 17 P. 2d 234.

3. Exclusiveness of remedy.

If a taxpayer wishes to enjoin collection of the tax he must move timely, and if a particular remedy is provided by statute it is exclusive. This section apparently does provide an exclusive remedy. Stott v. Salt Lake City, 47 U. 113, 127, 151 P. 988.

Collateral References.

Municipal Corporations⇦523(4).
63 C.J.S. Municipal Corporations § 1576.

10-7-40. Board of equalization and review—Waiver of objections by failing to appear before.—Whenever any board of commissioners, city council or board of town trustees shall propose to levy any tax under the provisions of this article it shall before doing so appoint a board of equalization and review to consist of three or more of its members; which board shall upon the completion of the lists of the property in any of the districts taxed give public notice of the completion of such lists. Such notice shall be published at least one day in a newspaper printed in the city or town or posted in three public places in the manner provided for publication or posting notice of intention to make the improvement, and shall contain the date on which said board will begin its sittings, which shall be at least five days from the date of publishing or posting such notice. Such notice shall state the time and place of meeting of said board, which shall be during the usual business hours and for not less than three consecutive days. During the time specified said lists shall be open to public inspection, and any person feeling aggrieved shall

have a hearing. Such board shall have authority to make corrections in any proposed assessment, and after it shall have met for at least three days it shall make a report to the body appointing it of any changes or corrections made by it in the assessment list, and upon such report being made to it such body may proceed with the levy of such tax. Every person whose property is liable to be assessed and who fails to appear before such board of equalization and review and make any and every objection he may have to the levy of such tax shall be deemed to have waived all and every objection to such levy, except the objection that the governing body failed to obtain jurisdiction to order the making of the improvement to pay the cost and expense for which such tax is levied.

History: R. S. 1898 & C. L. 1907, § 265; L. 1911, ch. 125, § 1; C. L. 1917, § 683; L. 1921, ch. 15, § 1; R. S. 1933 & C. 1943, 15-7-39.

1. Mandamus.

In action by contractors for issuance of writ of mandamus against city officials commanding them to levy valid special assessment for payment of warrants issued in payment for construction of sewer, in which it was claimed that tax which had been levied was void because of noncompliance with this section, relief was denied, since even though such levy was conceded to be void, city was liable on warrants by virtue of 10-7-48 and 10-7-63, where majority of property owners had paid installments on such tax, and compelling levy of new tax would result in confusion. Ryberg v. Lundstrom, 70 U. 517, 261 P. 453.

Collateral References.

Municipal Corporations⇦493(1).
63 C.J.S. Municipal Corporations § 1485.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack on assessment based on improper inclusion or exclusion of property, 100 A. L. R. 1292.

10-7-41. Notice of intention to make improvements—Objections.—In all cases before making any of the improvements or levying any taxes as provided in this article the governing body shall give notice of the intention to make such improvement and levy such tax, which notice shall state the purpose for which the taxes are to be levied, the boundaries of the district to be affected or benefited by the improvements, and in a general way shall describe the improvements proposed to be made, with the estimated cost as determined by the engineer of such city or town, and may designate one or several different kinds of service or of materials or forms of construction. Such notice shall be published for a period of at least twenty days in each issue of a newspaper published in such city or town; provided, that where no newspaper is published in such city or town the governing body may provide for publication of such notice by posting in at least three public places in such city or town, the notice so posted to remain posted for at least twenty days. Such notice shall designate a time within which protest shall be filed with the city recorder of such city or the clerk of such town board. Any person who is the owner of property to be assessed in the district mentioned in such notice shall have the right to file in writing a protest against making such improvement. If at or before the time fixed in such notices written objections to the making of such improvement and the levy of such tax, signed by the owners of two-thirds of the frontage or area of the property fronting or abutting on or adjacent to the streets or public alleys to be improved or especially affected or benefited thereby, are filed with the city recorder of the city or the clerk of the board of trustees of the town,

such proposed improvements shall not be ordered made. If the owners of two-thirds of the property mentioned do not file such objections, the governing body shall have jurisdiction to order the making of the improvements mentioned in said notice.

History: R. S. 1898, § 273; L. 1901, ch. 131, § 1; C. L. 1907, § 273; C. L. 1917, § 691; L. 1921, ch. 15, § 1; R. S. 1933 & C. 1943, 15-7-40.

Compiler's Note.

Analogous former statute, see § 13, ch. 41, of Laws 1890.

1. Jurisdictional steps.

All of the jurisdictional steps prescribed by this section must be taken to confer jurisdiction upon the city council to order the improvement in question. Stott v. Salt Lake City, 47 U. 113, 120, 151 P. 988, and cases cited.

The things required of the city by this section are jurisdictional, and unless complied with with reasonable strictness, the city authorities are without power or jurisdiction to impose a special assessment or tax to defray the costs of the proposed improvement. Gwilliam v. Ogden City, 49 U. 555, 164 P. 1022.

If jurisdiction is lacking, the assessment may be collaterally attacked at any time. Gwilliam v. Ogden City, 49 U. 555, 164 P. 1022, applying Comp. Laws 1907, § 273.

2. Notice of intention to make improvement.

This notice may not be dispensed with; it is jurisdictional, and is an essential prerequisite. But the notice, in and of itself, is sufficient to meet the requirements of "due process of law." However, the requirements of this section must be substantially complied with. Jones v. Foulger, 46 U. 419, 150 P. 933, reaffirmed in Stott v. Salt Lake City, 47 U. 113, 120, 151 P. 988; Branting v. Salt Lake City, 47 U. 296, 302, 153 P. 995.

If the notice of intention to open up the avenue in question and the proceedings had in pursuance thereof complied with this section, and gave the governing body jurisdiction to purchase the lands specified in the notice, that body is not deprived of the jurisdiction so acquired merely because part of the purchase price of the lands necessary to open up the avenue is paid in cash, and part by defraying the cost of constructing a sewer and sidewalk for the benefit of the sellers, because purchase price is not necessarily confined to cash price. Acord v. Salt Lake City, 73 U. 542, 551, 275 P. 1103.

3. Sufficiency of notice of intention.

A notice of intention to pave which shows the intention to levy the tax, its purpose, a general description of improvements, the boundaries of the paving district proposed, the estimated cost, and the time set for hearing written objections to such tax, is sufficient. Armstrong v. Ogden City, 9 U. 255, 34 P. 53, applying Laws 1890, ch. 41, § 13. This case was reaffirmed in Stott v. Salt Lake City, 47 U. 113, 120, 151 P. 988.

If notice of intention does not necessarily include plaintiff's property in its general description and specific description expressly excludes it, notice is insufficient and may not be amended; a new notice must be given. Jones v. Foulger, 46 U. 419, 150 P. 933, explaining Armstrong v. Ogden City, 9 U. 255, 34 P. 53.

Under this section the published notice to the taxpayers must name a time and place when and where any taxpayer who feels aggrieved may question the justness or validity of assessment and levy of the tax. And where city had jurisdiction to levy an assessment and proceedings are merely irregular, abutting owner, who was benefited by the work, cannot, after allowing work to be completed without objection, thereafter object to an assessment for amount of contract price. Branting v. Salt Lake City, 47 U. 296, 153 P. 995, applying Comp. Laws 1907, § 265.

Under this section a notice of an intention to create a certain curb and gutter district and to "build therein concrete curbs and gutters" and to do the "necessary grading therefor" is not notice of an intention to change the grade of the whole street, because it fails "to state the purpose for which the taxes are to be levied" as required by this section. Accordingly, there was no jurisdiction to order the improvements and levy the assessment upon property, and such assessment may be collaterally assailed at any time. Gwilliam v. Ogden City, 49 U. 555, 164 P. 1022.

4. Consent of property owners.

Under former statute, held that action of city council in finding that sufficient proportion of property owners had consented to street improvement was not conclusive as against property owners duly objecting. Ogden City v. Armstrong, 168 U. S. 224, 42 L. Ed. 444, 18 S. Ct. 98, affirming, on city's appeal, 12 U. 476, 43 P. 119, as to one of appellees and dismissing appeal, for want of jurisdiction, as to other appellees.

Under former statute, held that, under

circumstances, property owners objecting to assessments for street improvement on ground that sufficient proportion of property owners had not consented to improvement, and that city council's finding to contrary was erroneous, were not required to proceed by certiorari, and that remedy by injunction was available to them. Ogden City v. Armstrong, 168 U. S. 224, 42 L. Ed. 444, 18 S. Ct. 98, affirming, on city's appeal, 12 U. 476, 43 P. 119, as to one of appellees and dismissing appeal, for want of jurisdiction, as to other appellees.

Under former statute, held that fact of consent to street improvement by requisite proportion of property owners, manifested by failure of sufficient proportion of such owners to object to improvement, was jurisdictional and in nature of condition precedent to exercise by city council of power to make assessment or levy tax for improvement. Ogden City v. Armstrong, 168 U. S. 224, 42 L. Ed. 444, 18 S. Ct. 98, affirming, on city's appeal, 12 U. 476, 43 P. 119, as to one of appellees and dismissing appeal, for want of jurisdiction, as to other appellees.

5. Publication of estimated cost.

While this section requires publication of an estimate of the cost of the improvement, it does not provide that the estimate shall not be exceeded in making the improvement. Branting v. Salt Lake City, 47 U. 296, 153 P. 995.

Under this section, 10-7-42, and 10-7-45 the fact that the lowest bid exceeds the "estimated cost of the improvement," and a contract is let accordingly, does not take away from city the power to levy an assessment in excess of such estimated cost, because such an "estimate" is merely a proximate judgment or opinion. This is at most a mere irregularity, and not a jurisdictional defect. Branting v. Salt Lake City, 47 U. 296, 153 P. 995, applying Comp. Laws 1907, § 273.

6. Effect of failure of council to order improvement.

If requirements of this section are duly complied with by publication of proper notice of intention to make improvement in question, failure of council to make order directing improvement to be made does not deprive council of jurisdiction to assess and collect a tax therefor, such failure being merely an irregularity, and not jurisdictional. Stott v. Salt Lake City, 47 U. 113, 151 P. 988.

7. Collateral attack.

An improvement assessment cannot be collaterally assailed in equity for a mere irregularity. But the notice of intention is jurisdictional, and if it does not comply with the requirements of the law, the assessment may be collaterally assailed. Gwilliam v. Ogden City, 49 U. 555, 164 P. 1022.

8. Objections by property owners.

Where, at or before the time set for hearing objections to a proposed paving tax, the owners of more than two-thirds of the front feet of the abutting property liable to such tax filed written objections to such tax, the governing body acquires no jurisdiction to proceed with the paving. See Armstrong v. Ogden City, 9 U. 255, 34 P. 53, applying Laws 1890, ch. 41, § 13, and intimating that there was an implied repealer of 1 Comp. Laws 1888, § 1800.

Property owner, protesting local improvement but taking no further action during period of seven years in which improvement was made and taxes levied therefor, not entitled to injunction to prevent sale of property for taxes levied to pay for such improvement. Salt Lake & U. R. Co. v. Payson City, 66 U. 521, 244 P. 138.

9. Property considered in determining frontage.

Under former statute, held that city-owned property was not to be included in ascertaining property frontage to be considered in determining whether frontage of objecting owners constituted sufficient proportion of entire frontage for such owners' objections to defeat council's jurisdiction to proceed with street improvement. Armstrong v. Ogden City, 12 U. 476, 43 P. 119, affd. on city's appeal, as to one of appellees and appeal dismissed, for want of jurisdiction, as to other appellees, 168 U. S. 224, 42 L. Ed. 444, 18 S. Ct. 98.

10. Who may protest.

Only owners of legal title may make protest. Cave v. Ogden City, 51 U. 166, 169 P. 163.

Railroad company owning lots abutting on street included within proposed paving district has right to file its protest same as any other private owner of property fronting on street. Cave v. Ogden City, 51 U. 166, 169 P. 163.

One whose property has been sold for delinquent taxes and an auditor's deed therefor issued in favor of the county cannot protest proposed local improvement as a property owner under this section. Salt Lake & U. R. Co. v. Payson City, 66 U. 521, 244 P. 138.

11. Withdrawal of objections.

Under former statute, held that city council lost jurisdiction to proceed with street improvement, without institution of new proceeding, when, at time set for hearing, objections by sufficient number of property owners were on file, and that,

so far as this fact was concerned, it was immaterial that thereafter certain of objecting owners withdrew their objections with result, as claimed by city, that proportion of objecting owners was less than that required to defeat council's jurisdiction. Armstrong v. Ogden City, 12 U. 476, 43 P. 119, aff'd. on city's appeal, as to one of appellees and appeal dismissed, for want of jurisdiction, as to other appellees, 168 U. S. 224, 42 L. Ed. 444, 18 S. Ct. 98.

Property owners protesting proposed local improvement have right to withdraw protests at any time before period for filing protests expires, notwithstanding such withdrawal defeats effectiveness of protests of others by reducing the frontage of protesting property owners below the two-thirds necessary to defeat improvement. Salt Lake & U. R. Co. v. Payson City, 66 U. 521, 244 P. 138.

Collateral References.

Municipal Corporations⇨294(1).
63 C. J. S. Municipal Corporations § 1094.

10-7-42. "Lot" and "land" defined—Assessment according to area or frontage—Corner lots.—The word "lot" as used in this article shall be taken to mean any subdivided real estate. The word "land" shall mean any unsubdivided real estate. All special taxes to cover the cost of any public improvement herein authorized shall be levied and assessed on all blocks, lots, parts of blocks and lots, lands and real estate bounding, abutting or adjacent to such improvement, or within the districts created for the purpose of making such improvement, to the extent of the benefits to such lots, parts of lots, lands and real estate by reason of such improvement; such benefits to be equal and uniform. Such assessments may be according to area or frontage under such rules as the governing body may consider fair and equitable, and may be prorated and scaled back from the property line; provided, that an allowance shall be made for corner lots so that they are not assessed at full rate on both streets, and when any public improvement shall extend into, through or past any undivided tract taxes shall be levied so as not to be charged against the real estate adjoining the improvement for a greater depth than the average distance subdivided real estate is taxed for the same improvement. Such assessment and finding of benefits shall not be subject to review in any legal or equitable action, except for fraud, gross injustice or mistake.

History: R. S. 1898 & C. L. 1907, §§ 261, 274; C. L. 1917, §§ 679, 692; R. S. 1933 & C. 1943, 15-7-41.

1. Construction and application.

Under this section, an assessment for local improvements cannot exceed the benefits. Lannan v. Waltenspiel, 45 U. 564, 147 P. 908, applying Comp. Laws 1907, § 274.

2. Time for objecting to assessment.

Under last sentence of this section taxpayer is not required to make protest before the city council sitting as a board of equalization, against levy of tax to pay for sidewalk construction, as a condition precedent to bringing a suit to restrain its collection, where protest would have been futile. Stott v. Salt Lake City, 47 U. 113, 151 P. 988, applying Comp. Laws 1907, § 274.

If taxpayer wishes to object to assessment and levy on ground that tax was levied for a larger amount than was authorized, he must act promptly. Branting v. Salt Lake City, 47 U. 296, 153 P. 995.

Collateral References.

Municipal Corporations⇨459.
63 C.J.S. Municipal Corporations § 1410.
Frontage cost, 48 Am. Jur. 621, Special or Local Assessments § 66.

Assessment for improvements by the front-foot rule, 56 A. L. R. 941.

Property unit for purposes of assessment for street or other local improvement as affected by owner's disregard of original lot lines or creation of new ones, 104 A. L. R. 1049.

10-7-43. Description of property in case of common or separate ownership.—It shall be sufficient in any case in making a levy or assessment

of any tax to describe the lot or piece of ground as the same is platted and recorded, although the same may belong to several persons, but in case any lot or piece of ground belongs to different persons, the owner of any part thereof may pay his proportion of the tax on such lot or piece of ground, and his proper share may be determined by the city or town treasurer.

History: R. S. 1898 & C. L. 1907, § 275; C. L. 1917, § 693; R. S. 1933 & C. 1943, 15-7-42.

Collateral References.

Municipal Corporations⇐479.

63 C.J.S. Municipal Corporations § 1440.

Cotenancy as factor in determining representation of property owners in petition for public improvement, 3 A. L. R. 2d 127.

10-7-44. Intersections—Cost of improving, how assessed.—The cost and expense of grading, filling, culverting, curbing, guttering or otherwise improving, constructing or repairing streets, alleys and sidewalks at their intersections may be included in the special tax levied for the construction or improvement of any one street, alley or sidewalk, as may be deemed best by the governing body.

History: R. S. 1898 & C. L. 1907, § 276; C. L. 1917, § 694; R. S. 1933 & C. 1943, 15-7-43.

Collateral References.

Municipal Corporations⇐470.

63 C.J.S. Municipal Corporations § 1430.

10-7-45. Time when special taxes may be levied—Cost of work to be published—Interim warrants may issue to contractor.—Special taxes may be levied as the improvements are completed in front of or along or upon any block or lot, or part thereof, or pieces of ground, or at the time the improvement is entirely completed, or when light service or park maintenance is commenced, as shall be provided in the ordinance levying the tax; provided, that before any special tax for special improvements shall be levied the cost of such improvements in the improvement district, or part thereof, named in the notice of intention to make such improvement shall be ascertained by contract duly let to the lowest responsible bidder, for the kind of service or material or form of construction which may be determined upon, after publication of twenty days' notice to contractors in the manner provided for publication of notice of intention to make such improvements. Such notice may be published simultaneously with the notice of intention, and the cost of such improvement shall not exceed to the property owner his proportion of the total cost of the improvement determined as provided in section 10-7-23. Where any improvement in any extension varies as to character, width, extent or otherwise the property fronting, abutting upon or adjacent to the street improved may be assessed at varying rates in accordance with the character, width or extent of the improvement upon that portion of the street immediately abutting the property. There may be included in any contract for work in such district any one or more of the improvements in this article provided for. Where assessment is levied for the cost of opening, widening or extending streets or alleys the purchase or condemnation price of the land shall be deemed the contract price, and notice to contractors may be dispensed with. The board of commissioners, city council or board of town trustees may, from time to time as work proceeds in any improve-

ment district pursuant to contract duly entered into, issue to the contractor interim warrants against the improvement district for not to exceed ninety per cent in value of the work theretofore done upon estimates of the city or town engineer, which warrants shall bear interest at the rate of six per cent per annum from date of issue until fifteen days after levy of assessment. The interest accruing on such warrants shall be included in the cost of the improvement. Such interim warrants and interest shall be taken up and paid by special improvement warrants or special improvement bonds issued upon completion of the work.

History: R. S. 1898, § 277; L. 1907, ch. 127, § 1; C. L. 1907, § 277; C. L. 1917, § 695; L. 1921, ch. 15, § 1; R. S. 1933 & C. 1943, 15-7-44.

Compiler's Note.

The reference in this section to "section 10-7-23" appeared in Code 1943 as "section 15-7-23."

1. Construction and application.

Provision of this section which authorizes issuance of interim warrants against improvement district to contractors is valid. Bair v. Montrose, 58 U. 398, 199 P. 667.

2. Time for objecting to assessment.

Under this section and 10-7-40, taxpayer cannot wait until improvement has been completed and then object that city lost or exceeded its power or jurisdiction in assessing the tax in excess of the original estimated cost thereof, and the reason is that he is given ample opportunity to assail its validity, and file his protest. Branting v. Salt Lake City, 47 U. 296, 308, 153 P. 296, following Stott v. Salt Lake City, 47 U. 113, 151 P. 988.

3. Grounds for objection.

One who is not injured by the manner in which the purchase price of the lands is paid may not complain, because of the rule that when jurisdiction to construct a special improvement has been once acquired, mere irregularities in what is thereafter done do not defeat jurisdiction. For example, city may pay for land by constructing a sewer and sidewalk for benefit of owners of land purchased; nor is advertising for bids and letting contract to lowest bidder a condition precedent to such action on part of city. Acord v. Salt Lake City, 73 U. 542, 275 P. 1103.

4. Medium of payment for improvements.

That part of this section allowing city to issue warrants in payment of the improvement in lieu of cash, also allows payment of purchase price of land, taken for improvement, in services for sellers thereof. Acord v. Salt Lake City, 73 U. 542, 551, 275 P. 1103.

Cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter or otherwise improve streets, and hence, city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

Collateral References.

Municipal Corporations⇨408(1).
63 C.J.S. Municipal Corporations § 1297.

Use of credit of municipality in event of inability to collect or insufficiency of special assessments, 70 A. L. R. 176, 135 A. L. R. 1287.

10-7-46. Treasurer to give notice when tax delinquent.—When any special tax is levied it shall be the duty of the city recorder to deliver to the city treasurer, and of the town clerk to deliver to the town treasurer, a certified copy of the ordinance levying such tax, and such treasurer shall without delay give at least five days' notice in one or more newspapers having general circulation in the city or town of the time when such tax will become delinquent.

History: R. S. 1898 & C. L. 1907, § 278; C. L. 1917, § 696; R. S. 1933 & C. 1943, 15-7-45.

Collateral References.

Municipal Corporations⇨486(1).
63 C.J.S. Municipal Corporations § 1399.

Effect of certificate, statement (or refusal thereof) or error by tax collector or other public officer regarding unpaid assessments against specific property, 21 A. L. R. 2d 1273.

10-7-47. Special taxes for water, light, sewers and sidewalks—Benefits, how determined.—Special or local taxes may be levied by the governing body of any city or town for the purpose of constructing, reconstructing, extending or maintaining waterworks, reservoirs, canals and ditches, laying pipes and mains, erecting hydrants and keeping the same in repair; for the purpose of supplying water for domestic and irrigation purposes, or either, and for the purpose of regulating, controlling and distributing the same, and for the purpose of regulating and controlling water and water courses leading into the city or town; for constructing and maintaining gas, electric or other plants for illumination, and the necessary means and cost of distribution; and for constructing, extending and repairing sewers and drains; and for constructing and paving sidewalks; such taxes to be levied on the real estate lying and being within the district in which such improvements may be made, or for the benefit of which such taxes are to be expended, to the extent of the benefits to such property by reason of such improvement or expenditure; provided, that a tax levied for supplying water for irrigation, and for distributing and regulating the same, may be levied upon real estate according to the amount of water used thereon, or may be levied as an acreage tax. The benefits to such property shall be determined by the governing body and all taxes or assessments made for such purposes shall be collected in the same manner as other special assessments, and shall be subject to the same penalty.

History: R. S. 1898 & C. L. 1907, § 279; L. 1911, ch. 122, § 1; C. L. 1917, § 697; R. S. 1933 & C. 1943, 15-7-46.

1. Construction and application.

Prior to the amendments made to this section by chapter 122 of the Session Laws of 1911, the powers therein conferred to levy and collect "special or local taxes" for the improvements therein enumerated, except the construction and paving of sidewalks, which was not included, were given to cities only. Towns were not included. In 1911 section 279 of Comp. Laws 1907 was amended, and the power to levy "special or local taxes" was extended to incorporated towns, and the "constructing and paving of sidewalks" was added to the list of public improvements therein enumerated that might be made under and in pursuance of that section, and the cost thereof defrayed by special taxes levied for that purpose, but nothing was said about paving streets. Woodring v. Straup, 45 U. 173, 143 P. 592.

Cities in availing themselves of the authority conferred by this section adopt ordinances providing in detail for the levy and collection of the assessment. Petterson v. Ogden City, 111 U. 125, 176 P. 2d 599, in which terms of city ordinance are quoted.

Collateral References.

Municipal Corporations⇨412.

63 C.J.S. Municipal Corporations § 1302.

Waterworks, sewer systems and disposal plants and lighting systems, 48 Am. Jur. 591, Special or Local Assessments §§ 33-35.

10-7-48. Repaving—Ordinary and extraordinary repairs—Costs.—The provisions of this article shall apply to the repaving of streets and sidewalks, but not to ordinary repairs thereon. The governing body shall, by ordinance, define what constitutes repaving, what ordinary repairs, and what extraordinary repairs. The cost of ordinary repairs shall be borne by the municipality. The governing body may levy and collect special taxes upon the abutting property for the purpose of defraying the cost of repairs defined to be extraordinary without previous notice of intention or any right of the property owners to protest. The right of protest shall not exist in cases where for any reason any part of a

street or sidewalk lying within a paving district or any extension thereof shall not have been paved when the remainder of such district or extension was paved, and the governing body shall afterward levy a tax upon the abutting property for the payment of the same.

History: R. S. 1898 & C. L. 1907, § 280; C. L. 1917, § 698; R. S. 1933 & C. 1943, 15-7-47.

What constitutes reconstruction or the like, as distinguished from repair, of pavement, 41 A. L. R. 2d 613.

Collateral References.

Municipal Corporations⊂=414(1).
63 C.J.S. Municipal Corporations § 1315.

10-7-49. Special assessments a lien—Sale of property—Redemption.—Special assessments made and levied to defray the cost and expense of any work or service contemplated by the provisions of this article, and the cost of collection thereof, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date upon which the ordinance levying such assessment becomes effective, which lien shall be superior to the lien of any mortgage or other encumbrance and shall be equal to and on a parity with the lien for general taxes, and such lien shall continue until the tax is paid notwithstanding any sale of the property for or on account of a general or special tax, or the issuance of an auditor's deed. Such assessment shall be collected, or the property charged therewith shall be sold for such assessments and costs, in the manner provided by ordinance; and the board of commissioners, city council or board of town trustees may provide for the summary sale by the city or town treasurer of the property so assessed, after delinquency shall have occurred in the payment of any such tax or assessment, in the manner provided by law for sales for delinquent general taxes; provided, that if at any such sale no person shall bid and pay the city or town the amount of such assessment and costs, such property shall be deemed sold to the city or town for the amount of such assessment and costs; provided further, that in the event any property shall be illegally assessed, or any property which is by law exempt from assessment for local purposes shall be so assessed, the city or town so assessing such property shall be liable to the holders of the warrants or bonds issued against the funds created by such assessments, which amount shall be paid from the general fund of the city or town, In the event of a sale of any property for default in the payment of any special tax or assessment the period of redemption from such sale shall be three years from date of sale.

History: R. S. 1898 & C. L. 1907, § 281; C. L. 1917, § 699; L. 1921, ch. 15, § 1; R. S. 1933 & C. 1943, 15-7-48; L. 1947, ch. 17, § 1.

Compiler's Note.

The 1947 amendment changed the provisions of this section relative to status of lien, and under the present section the assessment lien is on a parity with lien for general taxes.

1. Construction and application.

This section relates exclusively to special taxes for local improvements in cities, and, whatever its effect upon the lien of such taxes, it has no reference to drainage district taxes. Robinson v. Hanson, 75 U. 30, 33, 282 P. 782.

2. Nature of lien.

The special tax for paving a street is a special lien on the property. Stinson v. Godbe, 46 U. 468, 472, 150 P. 967.

3. Priorities.

The lien provided for by this section, in order to be of any benefit at all, must of necessity be paramount to all other liens. Lannan v. Waltenspiel, 45 U. 564, 570, 147 P. 908.

The lien of a prior mortgage is inferior to the lien of a city for a special assessment. Lannan v. Waltenspiel, 45 U. 564, 147 P. 908.

4. Collection of special assessments.

If city ordinance provides adequate procedure for the city to enforce its assessments, and there is no statute authorizing resort to the courts for the enforcement of its assessments, the city is restricted to the procedure set out in the ordinance and may not foreclose special improvement tax liens in a judicial proceeding. It follows from this that the defenses of estoppel and laches are not applicable. Petterson v. Ogden City, 111 U. 125, 176 P. 2d 599, 601, 604.

5. Enforcement of lien.

The legislature did not intend to limit in any way the time special improvement tax liens could be enforced. The section itself indicates that the period of time after delinquency before the list of delinquents is made and notice of sale published is not vital. Petterson v. Ogden City, 111 U. 125, 176 P. 2d 599, 603.

6. Extinguishment of lien.

Where after a lien for special improvements had accrued there was levied a general tax against such property which was sold to satisfy the latter tax, held the sale for general taxes extinguished the municipal lien for special improvement taxes. Western Beverage Co. of Provo, Utah v. Hansen, 98 U. 332, 96 P. 2d 1105; discussed at length in Petterson v. Ogden City, 111 U. 125, 176 P. 2d 599, and the court expressed the opinion that the decision was wrong, but deemed it inadvisable to overrule it because that decision had been in effect for a period of seven years, and became a rule of property in this state.

7. Mandamus.

In action by contractors for issuance of writ of mandamus against city officials commanding such officials to levy valid special assessment for payment of warrants issued in payment for construction of sewer, in which it was claimed that tax which had been levied was void because of noncompliance with 10-7-39 with reference to appointment and meetings of board of equalization, relief was denied, since even though such levy was conceded to be void, city was liable on warrants by virtue of this section and 10-7-63, where majority of property owners paid installments on such tax, and compelling levy of new tax would result in confusion. Ryberg v. Lundstrom, 70 U. 517, 261 P. 453.

8. Injunctions.

Equity will not enjoin a city from selling property for its special assessment taxes, where the landowner disregarded the plain provisions of this section by which he was bound. Petterson v. Ogden City, 111 U. 125, 176 P. 2d 599, 604.

Collateral References.

Municipal Corporations⇨574.

63 C.J.S. Municipal Corporations § 1637.

Lien, 48 Am. Jur. 724, Special or Local Assessments § 194 et seq.

Constitutionality of statute giving priority to lien for public improvements over pre-existing contractual lien, 78 A. L. R. 513.

Effect of certificate, statement (or refusal thereof) or error by tax collector or other public officer regarding unpaid assessments against specific property, 21 A. L. R. 2d 1273.

Lack of or defects in petition of property owners for local improvement as affecting validity or enforcement of assessment, 95 A. L. R. 116.

Manner of enforcing special assessments against public property, 95 A. L. R. 689, 150 A. L. R. 1394.

Personal liability of property owner to pay assessments for local improvements, 127 A. L. R. 551, 167 A. L. R. 1030.

Priority as between liens for public improvements, 5 A. L. R. 1301, 99 A. L. R. 1478.

Rights and liabilities of municipality as to interest earned on improvement assessments or other special funds collected or held by it, 143 A. L. R. 1341.

Tax sale as freeing property from possibility of further assessment for benefits to land, 11 A. L. R. 2d 1133.

10-7-50. Retroactive effect of act.—The provisions of this article in so far as the same are remedial in their nature shall apply to the enforcement of all rights heretofore acquired.

History: L. 1921, ch. 15, § 3; R. S. 1933 & C. 1943, 15-7-49.

Collateral References.

Municipal Corporations⇨405.

63 C.J.S. Municipal Corporations § 1290.

Right of landowner to recover back benefit assessments, upon ground of abandonment of improvement project, 145 A. L. R. 1129.

ARTICLE 8

SPECIAL IMPROVEMENT GUARANTY FUND

10-7-51. Purposes of fund.—Any city or town which has issued or may hereafter issue any special improvement bonds or warrants shall by appropriation from the general fund, or by the levy of a tax of not to exceed one mill in any one year, or by the issuance of general obligation bonds, or by appropriation from such other sources as may be determined by the board of commissioners, city council or board of town trustees, as the case may be, create a fund for the purpose of guaranteeing, to the extent of such fund, the payment of bonds or warrants, and interest thereon, issued against local improvement districts for the payment of local improvements therein. Such fund shall be designated as "Special Improvement Guaranty Fund."

History: L. 1921, ch. 9, § 1; R. S. 1933 & C. 1943, 15-7-50.

1. Constitutionality.

This section is not in violation of Const. Art. I, § 7, or Art. XIV, § 3. Wicks v. Salt Lake City, 60 U. 265, 208 P. 538.

2. Construction and application.

Provisions of this act with reference to creation of special improvement guarantee fund are mandatory, and this act was intended to and did provide for the guaranteeing of warrants issued and outstanding at time of the passage of the act. Deseret Sav. Bank v. Francis, 62 U. 85, 217 P. 1114.

3. Effect where incorporated in city charter.

The special improvement laws (10-7-21 to 10-7-56, 10-7-61 to 10-7-64) although incorporated by reference in a city charter will not permit city to avoid obligation under another section of the charter requiring that an ordinance authorizing the issuance of bonds be in effect before the making of a construction contract. Carter v. Provo City, 6 U. (2d) 154, 307 P. 2d 906.

Collateral References.

Municipal Corporations⇨951.
64 C.J.S. Municipal Corporations § 1953.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 A. L. R. 220.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid assessment against specific property, 21 A. L. R. 2d 1273.

Liability of municipality because of misappropriation, diversion, or withholding of funds collected by or paid to it on account of special assessment against property for improvements, 107 A. L. R. 1354.

10-7-52. Funds transferable to guaranty fund.—All excess interest charges and penalties collected by the city or town for the benefit or credit of any special improvement fund and remaining on hand after all the bonds or warrants, together with interest thereon, drawn against said special improvement fund shall have been fully paid and canceled

shall be transferred by the treasurer to the special improvement guaranty fund.

History: L. 1921, ch. 9, § 2; R. S. 1933 & C. 1943, 15-7-51.

10-7-53. When payments to be made out of fund.—When any bond, warrant or coupon drawn against any special improvement fund is presented to the city or town for payment and there is not a sufficient amount in said special improvement fund to pay the same, unless otherwise requested by the holder, payment therefor shall be made by warrant drawn against the special improvement guaranty fund.

History: L. 1921, ch. 9, § 3; R. S. 1933 & C. 1943, 15-7-52.

10-7-54. Sale of property to city at tax sale—Amount payable from fund—Proceeds from sale of property—Payment into fund.—In the event that any property is sold to the city or town at tax sales or under foreclosure for delinquent special improvement taxes, such purchase shall be made by warrant drawn against the special improvement guaranty fund. Such city or town shall not be required, however, to make payment, on any such sale from such special improvement guaranty fund to the fund of the special improvement district for whose benefit such sale is made, of an amount in excess of the installments of such tax actually delinquent, with accrued interest thereon to date of sale; but shall thereafter, so long as such real estate shall not have been redeemed from such sale, and up to the time of issuance of tax deed for such property, make payment of the annual installments, with interest, on such tax as the same fall due. Upon tax deed issuing for such real estate to the city or town any remaining installments due on such tax, with accrued interest to date, shall be paid from such special improvement guaranty fund to the fund of such special improvement district. All proceeds from the redemption or sale of property sold under foreclosure or of certificates of tax sale held by the city or town shall be paid into the special improvement guaranty fund.

History: L. 1921, ch. 9, § 4; 1931, ch. 26, § 1; R. S. 1933 & C. 1943, 15-7-53.

10-7-55. Subrogation rights of city on payment of bonds and warrants.—Whenever a city or town shall have paid under its guaranty any sum on account of principal or interest on the bonds or warrants of any district it shall be subrogated to the rights of the holders of such bonds or warrants or interest coupons so paid, and such bonds or warrants or coupons and the proceeds thereof shall become a part of the guaranty fund.

History: L. 1921, ch. 9, § 6; R. S. 1933 & C. 1943, 15-7-54.

10-7-56. Replenishment of fund—Transfer of surplus to general fund.—Whenever there is not a sufficient amount of cash in the special improvement guaranty fund at any time to make any and all purchases of property bid in by the city or town at sales of property for delinquent special

improvement taxes, the governing body may replenish such guaranty fund by transfer or appropriation from the general fund of the city or town, or other available sources, as may be determined by it. Warrants drawing interest at a rate of not to exceed eight per cent per annum may be issued against said fund to meet any financial liabilities accruing against it, but at the time of making its next annual tax levy the city or town shall provide for the levy of a sum sufficient, with the other resources of the fund, to pay warrants so issued and outstanding; the tax for such purpose not to exceed one mill in any one year.

Whenever the surplus of the special improvement guaranty fund shall exceed forty per cent (40%) of the average amount of all outstanding special improvement bonds, notes, warrants or other obligations of all special improvement districts of a municipality during the preceding three year period, the governing body of said municipality may by resolution transfer said excess of surplus to the general fund.

History: L. 1921, ch. 9, § 5; R. S. 1933 & C. 1943, 15-7-55; L. 1961, ch. 23, § 1.

Compiler's Note.

The 1961 amendment added the second paragraph.

Collateral References.

Municipal Corporations⇨951.
64 C.J.S. Municipal Corporations § 1953.

Constitutionality and construction of statute which provides for the use of the general funds or credit of the municipality in event of default or delay in payment of, or inability to collect, or insufficiency of, special assessments for local improvements, 135 A. L. R. 1287.

ARTICLE 9

SCRIP OF CITIES OF THE FIRST AND SECOND CLASS

10-7-57. Issuance against fund to be raised by special tax.—In any instance where any city of the first or of the second class may levy a special tax for the purpose of making any local improvement the city treasurer, upon being so directed by the board of commissioners, at any time after the improvement is completed, may issue scrip against the fund to be raised by such special tax, and such scrip may be sold by the treasurer on order of the board of commissioners at either private or public sale, with or without advertisement, at any price not less than the face value of such scrip. The profits or premiums of such sale, if any, shall be placed in the fund raised by such scrip, and shall be used for no purposes except those for which said fund may be used.

History: L. 1905, ch. 77, § 1; 1907, ch. 69, § 1; C. L. 1907, § 282x; C. L. 1917, § 740; R. S. 1933 & C. 1943, 15-7-56.

Collateral References.

Municipal Corporations⇨485(1).
63 C.J.S. Municipal Corporations § 1452.

10-7-58. Manner of issuing scrip—Certificates—Contents.—Such scrip shall be so issued that there shall be a separate certificate for each lot,

part of lot or parcel of land affected by the special tax. Such certificates shall contain a description by block and plat of the particular lot, part of lot or parcel of land against which it is issued, and shall also state the amount of the special tax levied thereon, the date and purpose of such levy, the name of the person supposed to be the owner of the land taxed or assessed, the date or dates on which the special tax or the several installments thereof shall be delinquent, the interest payable on the same, both before and after delinquency, which interest shall be provided for in the ordinance levying such tax or assessment, and shall further state that all interest on said certificate or any installment mentioned therein shall cease when such tax or such installment is paid to the treasurer. No special tax or any installment thereof shall draw a greater rate of interest than six per cent per annum from date of issue of such scrip.

History: L. 1905, ch. 77, § 2; 1907, ch. 69, § 1; C. L. 1907, § 282x1; C. L. 1917, § 741; R. S. 1933 & C. 1943, 15-7-57.

10-7-59. Cancellation of scrip by payment of tax.—Any owner or person interested in any lot or parcel of land against which any scrip may have been issued as aforesaid for any special tax or assessment may pay the tax or assessment, or any installment thereof, with interest, to the city treasurer at any time after levy of such special tax or assessment, and thereupon the interest upon the amount so paid ceases, and the scrip standing against the land is thereby canceled and redeemed to the extent of such payment, and the lien of such scrip against the land is thereby canceled to the extent of such payment, and it becomes the duty of the record holder of such scrip, upon being notified by mail by the city treasurer, to present such scrip to the treasurer and receive the amount paid thereon. When any payment upon any scrip is made by the treasurer, he shall stamp or write a description of the partial payment and date thereof on the scrip, and keep a record of the same in his office, and whenever a complete redemption of scrip is made he shall write or stamp a statement of the date when the tax was paid, and when the scrip was presented, on such scrip, and file the same in his office.

History: L. 1905, ch. 77, § 3; 1907, ch. 69, § 1; C. L. 1907, § 282x2; C. L. 1917, § 742; R. S. 1933 & C. 1943, 15-7-58.

10-7-60. Scrip to be lien on property—Sale to satisfy.—All scrip issued hereunder shall be a lien against the property described therein from the date of the levy of the special tax or assessment for which the scrip was issued, and at any time after delinquency of the last installment the property described in scrip shall be sold by the city treasurer, as agent for the holder of such scrip, in the same manner as provided by law or ordinance for the sale of land for delinquent special taxes, to make the sum delinquent on the scrip and the costs and expenses of sale. After the issue of scrip all liability of the city thereon, except for faithful accounting for funds received to redeem the same, shall cease.

History: L. 1905, ch. 77, § 4; 1907, ch. 69, § 1; C. L. 1907, § 282x3; C. L. 1917, § 743; R. S. 1933 & C. 1943, 15-7-59.

Cross-Reference.

Sales for delinquent special assessments, 10-7-49.

ARTICLE 10

SPECIAL TAX FUNDS

10-7-61. Limitation on use of special tax funds.—In each case where a city or town levies or assesses any special or local tax for making and paying for any local improvement all money paid into the municipal treasury in payment of such special tax levies or assessments, or interest thereon, shall be deemed to be part of and constitute a fund for the payment of the costs and expense of making such local improvement, and for no other purpose.

History: L. 1907, ch. 140, § 1; C. L. 1907, § 282x4; L. 1913, ch. 52, § 1; C. L. 1917, § 744; R. S. 1933 & C. 1943, 15-7-60.

1. Effect where incorporated in city charter.

The special improvement laws (10-7-21 to 10-7-56, 10-7-61 to 10-7-64) although incorporated by reference in a city charter will not permit city to avoid obligation under another section of the charter requiring that an ordinance authorizing the issuance of bonds be in effect before the making of a construction contract. Carter v. Provo City, 6 U. (2d) 154, 307 P. 2d 906.

Collateral References.

Municipal Corporations⇨521.

63 C.J.S. Municipal Corporations § 1580.

Special tax distinguished, 48 Am. Jur. 565, Special or Local Assessments § 3.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 A. L. R. 220.

10-7-62. Fund to be kept separate and intact—Purpose and manner of payment from fund.—In any instance where a city or town may levy a special tax or assessment for the purpose of making and paying for any local improvement the fund created by such levy or assessment shall be in the custody of the treasurer. Each fund so created shall be kept intact and separate from all other funds and moneys of the city or town, and shall be paid out only on special tax warrants as hereinafter provided, and for no other purpose than paying the costs and expenses of making the improvement for which the special tax or assessment was levied.

History: L. 1907, ch. 140, § 1; C. L. 1907, § 282x5; L. 1913, ch. 52, § 1; C. L. 1917, § 745; R. S. 1933 & C. 1943, 15-7-61.

Collateral References.

Liability of municipal officers for diversion of money from one fund to another, 96 A. L. R. 664.

Right of municipal authorities temporarily to loan or transfer money from one fund or department to another, 70 A. L. R. 431.

10-7-63. Special improvement warrants—When issued and purpose.—In any instance where a city or town may levy a special tax or assessment for the purpose of making or paying for any local improvement the city auditor in cities having an auditor, the city recorder in cities not having an auditor, or the clerk of the board of town trustees, upon being so directed by the governing body shall fifteen days after the levy of such tax or assessment becomes effective issue warrants or bonds in

payment of the cost and expense of such local improvements against the funds created by such special tax levy or assessments, drawn on the treasurer of the city or town, and they shall be known as special improvement warrants or special improvement bonds, shall be consecutively numbered, shall be made in form, wording and color to distinguish them from other bonds of the city or towns, and shall be drawn payable to bearer and issued only in denominations of $1,000, $500, $100 and $50, except the last issued which may be for any lesser amount. Such warrants or bonds shall be so divided that substantially an equal proportion of the total issue will be due and payable annually during the period in which such special tax or assessment is to be paid as provided by the ordinance levying such tax or assessment, but shall be issued payable in not more than ten annual series or installments. All such warrants or bonds shall be dated as of the date on which the special tax shall begin to bear interest, and shall bear interest at a rate not exceeding seven per cent per annum from date until due and at the rate of eight per cent thereafter until paid, except light service and park maintenance warrants or bonds which shall bear interest only from and after the due date thereof. Interest shall be paid annually and shall be evidenced by interest coupons attached to such warrants or bonds and attested by the facsimile signature of the city auditor, city recorder or the clerk of the board of town trustees. Such warrants or bonds may be issued to the contractor doing the work in any such improvement district for the full amount of the contract price due at the time of their issuance, including any interest on interim warrants which may have been issued to him, and to the city or town in which such work is done and by which such bonds are issued for an amount not exceeding ten per cent of such contract price to cover the cost of levying, engineering, inspecting, publishing notices and other expenses incident thereto and in payment of property purchased or condemned for the purpose of opening, extending, or widening streets; provided, the city or town may in its discretion sell all such warrants or bonds and from the proceeds thereof pay any or all of said obligations, including the contractor any or all amounts due him.

History: L. 1907, ch. 140, § 3; C. L. 1907, § 282x6; L. 1913, ch. 52, § 1; C. L. 1917, § 746; L. 1921, ch. 16, § 1; 1937, ch. 18, § 21; R. S. 1933 & C. 1943, 15-7-62.

Compiler's Note.

The 1937 amendment added "and in payment of property purchased or condemned for the purpose of opening, extending, or widening streets" immediately preceding the proviso at the end of the section, and substituted said proviso for the following: "in the case of purchase or condemnation of property for the purpose of opening, extending or widening streets such warrants or bonds may be sold by the city or town and the proceeds thereof used to pay for such property, or they may be issued direct in payment for such property."

1. Payment of installments.

Under former statute, it was held that although city had collected sufficient taxes during first year to enable it to redeem not only installment due at end of that year but three subsequent installments as well, this did not relieve it from paying on remaining installments yearly instead of waiting until next unpaid installment fell due. R. M. Stinson & Co. v. Godbe, 51 U. 343, 170 P. 782.

2. Mandamus to compel sale.

Mandamus will not lie on behalf of a holder of a warrant to compel sale of property when any installment becomes delinquent and is unpaid. The holder is sufficiently compensated for delay in selling until whole tax becomes delinquent and remains unpaid, by the increase in rate of interest on his investment. Stinson

v. Godbe, 46 U. 468, 150 P. 967, applying Comp. Laws 1907, §§ 258, 282x6, 282x8.

3. Medium of payment for land purchased or condemned.

Cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter or otherwise improve streets, and hence, city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

Collateral References.

Municipal Corporations⇨485(1).
63 C.J.S. Municipal Corporations § 1452.

10-7-64. Limitation of liability of city.—No city or town shall be held liable for the payment of any special tax bond or warrant, except to the extent of the funds created and received by special tax levies or assessments and to the extent of its special improvement guaranty fund; but the city or town shall be held responsible for the lawful levy of all special taxes or assessments for the creation and maintenance of the special improvement guaranty fund as provided by law, and for faithful accounting, collection, settlement and payments of the taxes levied for local improvements and for the moneys of said funds.

History: L. 1907, ch. 140, § 6; C. L. 1907, § 282x9; L. 1913, ch. 52, § 1; C. L. 1917, § 748; L. 1921, ch. 16, § 1; R. S. 1933 & C. 1943, 15-7-63.

1. Construction and application.

Provisions of 10-7-50 et seq. with reference to creation of special improvement guaranty fund are mandatory and applied to warrants issued and outstanding at time of passage of the act. Deseret Sav. Bank v. Francis, 62 U. 85, 217 P. 1114.

2. Medium of payment.

This section does not prevent city from entering into contract for purchase of lands for legal tender. Sidney Stevens Implement Co. v. Ogden City, 83 U. 578, 33 P. 2d 181.

3. Mandamus.

In action by contractors for issuance of writ of mandamus against city officials commanding such officials to levy valid special assessment for payment of warrants issued in payment for construction of sewer in which it was claimed that tax which had been levied was void because of noncompliance with 10-7-39 with reference to appointment and meetings of board of equalization, relief was denied since even though such levy was conceded to be void, city was liable on warrants by virtue of this section and 10-7-48, and compelling levy of new tax would result in confusion. Ryberg v. Lundstrom, 70 U. 517, 261 P. 453.

Collateral Reference.

Liability of municipality because of misappropriation, diversion, or withholding of funds collected by or paid to it on account of special assessment against property for improvements, 107 A. L. R. 1354.

ARTICLE 11

ACTIONS FOR VIOLATIONS OF ORDINANCES

Section

10-7-65. Party plaintiff—Successive actions permitted.—All actions brought to recover any fine or to enforce any penalty under an ordinance

of a city or town shall be brought in the corporate name of the city or town as plaintiff; and no prosecution, recovery or acquittal for the violation of any such ordinance shall constitute a defense to any other prosecution of the same person for any other violation of any such ordinance although the different causes of action existed at the same time and if united would not have exceeded the jurisdiction of a justice of the peace.

History: R. S. 1898 & C. L. 1907, §§ 208, 303; C. L. 1917, §§ 585, 787; R. S. 1933 & C. 1943, 15-7-64.

Cross-Reference.

Justices' courts generally, 78-5-1 et seq.

1. Constitutionality.

This section does not violate Const., Art. VIII, § 16, which requires that style of all process shall be "The State of Utah." Salt Lake City v. Bernhagen, 56 U. 159, 189 P. 583.

2. Nature of proceedings.

Proceeding based upon information charging defendant saloon keeper with selling of intoxicating liquor after hours prescribed in city ordinance was criminal, and rules pertaining to criminal prosecutions for misdemeanors under statute were applicable. Salt Lake City v. Robinson, 39 U. 260, 116 P. 442, 35 L. R. A. (N. S.) 610, Ann. Cas. 1913E, 61.

Proceedings under city or town ordinances are criminal actions, not civil, and are governed by statutes relating to criminal prosecutions. Town of Ophir v. Jorgensen, 63 U. 288, 225 P. 342.

3. Liability for trespass.

If commissioners, acting individually and informally and not as a board, give peace officers directions as to enforcement of a void ordinance, they are liable as joint tort-feasors for resultant trespass. Roe v. Lundstrom, 89 U. 520, 57 P. 2d 1128.

Collateral References.

Municipal Corporations⇐635.
62 C.J.S. Municipal Corporations § 316.

10-7-66. Fines and forfeitures to be paid to treasurer.—All fines and forfeitures for the violation of ordinances shall be paid into the treasury of the corporation at such times and in such manner as may be prescribed by ordinance.

History: R. S. 1898 & C. L. 1907, §§ 209, 303; C. L. 1917, §§ 586, 787; R. S. 1933 & C. 1943, 15-7-65.

Collateral References.

Municipal Corporations⇐633(1).
62 C.J.S. Municipal Corporations § 316.

10-7-67. Pleading—Reference to ordinance—Judgment enforced by imprisonment.—In all actions for the violation of any ordinance it shall be sufficient if the complaint refers to the title and section of the ordinance under which such action is brought. Any person upon whom any fine or penalty shall be imposed may upon the order of the court before whom the conviction is had be committed to the county jail or the city prison or to such other place as may be provided for the incarceration of offenders until such fine, penalty and costs shall be fully paid.

History: R. S. 1898 & C. L. 1907, § 210; C. L. 1917, § 587; R. S. 1933 & C. 1943, 15-7-66.

1. Commitment for violation of ordinance.

If the ordinance, for violation of which accused is being sentenced, prescribes punishment by confinement in city jail, commitment in county jail is beyond court's jurisdiction. And in such case the imprisonment is illegal, and petitioner for habeas corpus must be released. Frankey v. Patten, 75 U. 231, 284 P. 318.

2. Imprisonment to enforce collection of fine.

While a person cannot be imprisoned for violation of nuisance ordinance, imprisonment to enforce collection of fine for such nuisance is proper. Ex parte Smith, 97 U. 280, 92 P. 2d 1098.

Nuisance ordinance providing for imprisonment to pay off fine at rate of $1 a day held violative of statute, providing imprisonment could not exceed one day for each $2 of unpaid fine, and a sentence imposed under such ordinance was invalid notwithstanding justice of peace imposed

the imprisonment at rate of $2 per day. Ex parte Smith, 97 U. 280, 92 P. 2d 1098.

Collateral References.
Municipal Corporations⇨643.
62 C.J.S. Municipal Corporations § 356.

10-7-68. Service of process and arrests.—Any peace officer may serve any process or make any arrest authorized to be made by any city or town officer.

History: R. S. 1898 & C. L. 1907, § 212; C. L. 1917, § 589; R. S. 1933 & C. 1943, 15-7-67.

Collateral References.
Municipal Corporations⇨637.
62 C.J.S. Municipal Corporations § 327.

10-7-69. Corporations may be complained against.—A corporation violating any of the provisions of a city or town ordinance may be complained against the same as a natural person.

History: L. 1903, ch. 26, § 1; C. L. 1907, § 212x; C. L. 1917, § 590; R. S. 1933 & C. 1943, 15-7-68.

Collateral References.
Municipal Corporations⇨635.
62 C.J.S. Municipal Corporations § 326.

10-7-70. Summons—Forms.—Whenever complaint is made against a corporation for violation of a city or town ordinance summons shall be issued thereon substantially in the following form:

State of Utah,
County of.....

In the ..... court, in and for the city (or town) of ....., county of ..... city, (or town)

vs.

.....

SUMMONS.

The state of Utah, to (naming the corporation):

You are hereby summoned to be and appear before the above entitled court at the courtroom thereof on the ..... day of ..... at the hour of ..... o'clock ....m., then and there to answer a charge made against you upon the complaint of ..... for (designating the offense in general terms), a copy of which complaint is hereto attached.

Dated this ..... day of ....., 19.....

Witness:

The Honorable .....
Judge of said court.

..... Clerk

By ..... Deputy Clerk.

In courts having a clerk the summons, with a copy of the complaint attached, shall be signed by the clerk thereof, and in courts having no clerk the summons shall be signed by the judge or justice thereof.

History: L. 1903, ch. 26, § 2; C. L. 1907, § 212x1; C. L. 1917, § 591; R. S. 1933 & C. 1943, 15-7-69.

Collateral References.
Municipal Corporations⇨637.
62 C.J.S. Municipal Corporations § 327.

10-7-71. Summons—Time and manner of service.—The summons and copy of complaint must be served at least twenty-four hours before the hour of appearance fixed therein by delivering to and leaving a copy thereof with the president or other head of the corporation, or the secretary, the cashier, or the managing or process agent thereof, and by showing to him the original summons.

History: L. 1903, ch. 26, § 3; C. L. 1907, § 212x2; C. L. 1917, § 592; R. S. 1933 & C. 1943, 15-7-70.

10-7-72. Appearance by agent of corporation—Bench warrant for default.—At the time appointed in the summons the corporation must appear by agent or attorney and plead thereto the same as a natural person. In case no appearance is made on or before the hour appointed, the court may issue a bench warrant for the person served as the officer or agent of the corporation, requiring him to be brought forthwith before the court to plead on its behalf.

History: L. 1903, ch. 26, § 4; C. L. 1907, § 212x3; C. L. 1917, § 593; R. S. 1933 & C. 1943, 15-7-71.

10-7-73. Hearing—Penalty imposed to be a fine.—After the plea of the corporation is entered the court must fix a time for the hearing of the cause, and thereafter the proceedings therein shall be the same as in the cases of natural persons charged with violating a city or town ordinance, except that in cases of conviction the penalty imposed in all instances shall be by way of fine.

History: L. 1903, ch. 26, § 5; C. L. 1907, § 212x4; C. L. 1917, § 594; R. S. 1933 & C. 1943, 15-7-72.

Collateral References.
Municipal Corporations⇨643.
62 C.J.S. Municipal Corporations § 179.

10-7-74. Execution on judgment against corporation.—Whenever a fine and costs, either or both, shall be imposed upon a corporation upon conviction for a violation of a city or town ordinance judgment therefor may be collected on execution issued out of the court in the same manner as an execution in a civil action.

History: L. 1903, ch. 26, § 6; C. L. 1907, § 212x5; C. L. 1917, § 595; R. S. 1933 & C. 1943, 15-7-73.

Collateral References.
Municipal Corporations⇨643.
62 C.J.S. Municipal Corporations § 355.

10-7-75. Appeals—City attorney to represent city.—Whenever a criminal action for the violation of a city or town ordinance is appealed to the district court for the county in which such city or town is situated it shall be the duty of the city or town attorney to appear and prosecute such action in the district court.

History: L. 1903, ch. 29, § 1; C. L. 1907, § 212x6; C. L. 1917, § 596; R. S. 1898 & C. L. 1907, § 302, subd. 14; C. L. 1917, § 786x14; R. S. 1933 & C. 1943, 15-7-74.

1. Right of appeal.

Since prosecution under town ordinance is criminal proceeding, town has no right to appeal from judgment of district court.

Town of Ophir v. Jorgensen, 63 U. 288, 225 P. 342.

2. Notice of appeal.

Attorney retained by city in action for violation of ordinance was proper party to be served with notice of appeal to district court. Sullivan v. District Court of Summit County, 65 U. 400, 237 P. 516.

In appeal from city court judgment convicting defendant for violation of ordinance, notice of appeal should have been served on attorney appearing for city, or, if that was impracticable, on mayor or city recorder under Code 1943, 104-5-11. Sullivan v. District Court of Summit County, 65 U. 400, 237 P. 516.

Appeal from conviction for violation of ordinance in city court held properly dismissed where county attorney was not served, and there was no proof of service on attorney appearing for city until long after appeal was dismissed by district court. Sullivan v. District Court of Summit County, 65 U. 400, 237 P. 516.

Collateral References.

Municipal Corporations⇐642(1).
62 C.J.S. Municipal Corporations § 361.

10-7-76. Witness fees and mileage, how paid.—Whenever a criminal action arising out of the violation of a city or town ordinance is tried on appeal, the per diems and mileage of witnesses for the prosecution shall be paid out of the treasury of the city or town in which such action originated.

History: L. 1903, ch. 29, § 2; C. L. 1907, § 212x7; C. L. 1917, § 597; R. S. 1898 & C. L. 1907, § 302, subd. 14; C. L. 1917, § 786x14; R. S. 1933 & C. 1943, 15-7-75.

ARTICLE 12

CLAIMS FOR DAMAGES

Section 10-7-77. Time for presenting—Contents—Condition precedent to action.
10-7-78. Failure to file, a bar—Amendment of claim.

10-7-77. Time for presenting—Contents—Condition precedent to action.—Every claim against a city or incorporated town for damages or injury, alleged to have been caused by the defective, unsafe, dangerous or obstructed condition of any street, alley, crosswalk, sidewalk, culvert or bridge of such city or town, or from the negligence of the city or town authorities in respect to any such street, alley, crosswalk, sidewalk, culvert or bridge, shall within thirty days after the happening of such injury or damage be presented to the board of commissioners or city council of such city, or board of trustees of such town, in writing, signed by the claimant or by some person authorized to sign the same, and properly verified, stating the particular time at which the injury happened, and designating and describing the particular place in which it occurred, and also particularly describing the cause and circumstances of the injury or damages, and stating, if known to claimant, the name of the person, firm or corporation, who created, brought about or maintained the defect, obstruction or condition causing such accident or injury, and the nature and probable extent of such injury, and the amount of damages claimed on account of the same; such notice shall be sufficient in the particulars above specified to enable the officers of such city or town to find the place and cause of such injury from the description thereof given in the notice itself without extraneous inquiry, and no action shall be maintained against any city or town for damages or injury to person or property, unless it appears that the claim for which the action was brought was presented as aforesaid, and that such governing body did not within ninety days thereafter audit and

allow the same. Every claim, other than claims above mentioned, against any city or town must be presented, properly itemized or described and verified as to correctness by the claimant or his agent, to the governing body within one year after the last item of such account or claim accrued, and if such account or claim is not properly or sufficiently itemized or described or verified, the governing body may require the same to be made more specific as to itemization or description, or to be corrected as to the verification thereof.

History: R. S. 1898, § 312; L. 1903, ch. 19, § 1; 1905, ch. 5, § 1; C. L. 1907, § 312; C. L. 1917, § 816; R. S. 1933 & C. 1943, 15-7-76.

Cross-References.

Claims upon disincorporation, 10-5-2.

False claims, 76-28-7.

Limitation of actions on claims against cities, 78-12-30.

1. Constitutionality and construction.

It is within power of legislature to impose such conditions upon right to sue cities and towns, which are merely arms of state government, as in its judgment may seem wise and proper. Berger v. Salt Lake City, 56 U. 403, 191 P. 233, 13 A. L. R. 5.

Second part of statute relating to filing of claims other than mentioned in first part does not modify the first part. Hamilton v. Salt Lake City, 99 U. 362, 106 P. 2d 1028.

2. Governmental immunity.

The operation of a free coasting hill is in the same category as any other recreational facility and the maintenance of facilities for recreation is a public and governmental function. Davis v. Provo City Corp., 1 U. (2d) 244, 265 P. 2d 415, 418.

The test in deciding whether the government is acting in a proprietary or governmental capacity is whether the act is for the common good of all without the element of special corporate benefit or pecuniary profit. Davis v. Provo City Corp., 1 U. (2d) 244, 265 P. 2d 415, 418.

A city is liable in damages when the city is negligent when acting in a proprietary capacity, but exempt from liability when the city is negligent in the performance of governmental duties. Davis v. Provo City Corp., 1 U. (2d) 244, 265 P. 2d 415, 417.

3. Necessity for presentation of claim.

Presentation of claim within time fixed by law is a condition precedent to bringing action against town. Brown v. Salt Lake City, 33 U. 222, 93 P. 570, 14 L. A. A. (N. S.) 619, 126 Am. St. Rep. 828, 14 Ann. Cas. 1004; Hurley v. Town of Bingham, 63 U. 589, 228 P. 213.

That no presentation of the claim is required by this section if the agents of the city are already apprised thereof, see opinion of Mr. Justice Wolfe in Moyle v. Salt Lake City, 111 U. 201, 176 P. 2d 882, 903, in which he said that the purpose of this section "was so that the city would be apprised of the details of any ordinary claims in order that agents of the city could timely and promptly look after the city's interests in securing evidence, etc., to defend any subsequent suits or as a basis for settlement."

4. Time for presenting claim.

Action by abutting owner to recover damages resulting from change of street grade was not barred by this section where claim was filed within 30 days after street improvement was completed. Webber v. Salt Lake City, 40 U. 221, 120 P. 503, 37 L. R. A. (N. S.) 1115.

It will be noticed that the claims which must be presented before an action can be brought and successfully maintained thereon are divided into two classes: One class consists of claims "for damages or injury alleged to have been caused by the defective, unsafe, dangerous or obstructed condition of any street, alley, crosswalk, sidewalk, culvert or bridge," which must be presented "within thirty days after the happening of such injury or damage." The other class consists of "every claim, other than the claims above mentioned," and must be presented, properly itemized or described, within one year after the last item of such "account or claim" accrued. Dahl v. Salt Lake City, 45 U. 544, 147 P. 622.

In claims arising out of torts, other than those which come within the 30 days' notice clause, notice must now be given within one year. Dahl v. Salt Lake City, 45 U. 544, 147 P. 622, opinion of Frick, J., pointing out that the amendment of this section nullifies rule announced in Brown v. Salt Lake City, 33 U. 222, 93 P. 570, 14 L. R. A. (N. S.) 619, 14 Ann. Cas. 1004, 126 Am. St. Rep. 828.

In action against city for damages due to obstructed street, court properly refused to admit in evidence claim filed more than 30 days after happening of accident, although it was called amended

and supplemental claim and supposedly supplemented claim filed within time, where second claim was for depreciation of automobile, injuries to motorist, wife and children, and first claim was merely for automobile damage and small medical bill for setting broken arm of child. White v. Heber City, 82 U. 547, 26 P. 2d 333.

5. Computation of time.

"In cases involving claims for death, the 30-day period would commence to run on the date of death of the person so injured, inasmuch as that is the date upon which the damage accrues to the personal representative or third party entitled to recover for such wrongful death." Nelson v. Logan City, 103 U. 356, 135 P. 2d 259, 264.

6. Sufficiency of claim.

Claim for injuries "sustained on or about January 15, 1902, while walking on the sidewalk along First West street between Seventh and Eighth South, * * * through the negligence of the city in suffering * * * a fence * * * to be on said sidewalk," not having misled the city, was sufficiently definite. Connor v. Salt Lake City, 28 U. 248, 78 P. 479.

The purpose of this section is to require every claimant to state clearly all of the elements of his claims to the board of commissioners or city council for allowance as a condition precedent to his right to sue the city and recover his damages in an ordinary action. Sweet v. Salt Lake City, 43 U. 306, 134 P. 1167, 8 N. C. C. A. 922.

Under this section, a notice in which damages were specified as "for general impairment" of an automobile, was an insufficient description of the damages; nor may it be cured by an amendment. Sweet v. Salt Lake City, 43 U. 306, 134 P. 1167, 8 N. C. C. A. 922.

Claim must be itemized. Moran v. Salt Lake City, 53 U. 407, 173 P. 702.

City rejecting claim for injuries cannot upon subsequent action by claimant contest sufficiency of claim, since statute requires that if claim is deemed insufficient or defective in certain particulars, city must point out defect or insufficiency at time. Burton v. Salt Lake City, 69 U. 186, 253 P. 443, 51 A. L. R. 364.

7. Verification of claim.

Letter sent to mayor and city council claiming damages for negligence of city in permitting escape of water from one of its reservoirs, held insufficient within this section where letter was unverified. Moran v. Salt Lake City, 53 U. 407, 173 P. 702.

Claim under this section need not be verified with particularity required by Code 1943, 104-12-1 dealing with verification of pleadings. White v. Heber City, 82 U. 547, 26 P. 2d 333. For present law as to verification, see Rules of Civil Procedure, Rule 11.

Failure to verify claim for injury resulting from defective sidewalk barred action against city. Hamilton v. Salt Lake City, 99 U. 362, 106 P. 2d 1028.

Last portion of section relating to other claims was intended to permit council to require proper verification in cases relating to other than street or sidewalk injuries. Hamilton v. Salt Lake City, 99 U. 362, 106 P. 2d 1028.

In action to recover damages from city for injuries sustained in fall due to allegedly defective sidewalk, held that action was barred under 10-7-77 due to plaintiff's noncompliance with this section, where plaintiff filed unverified claim with board of commissioners within thirty days after accident, and over six months after accident filed amended claim which contained a verification. Peterson v. Salt Lake City, 118 U. 231, 221 P. 2d 591.

8. Waiver.

In action against city for injuries sustained as result of defective sidewalk, objection that plaintiff's claim was not verified and did not sufficiently describe extent of injury was waived by city, where it did not decline to consider claim, but acted upon it. Bowman v. Ogden City, 33 U. 196, 93 P. 561.

Failure to file claim barred action against town, and contention that consideration of claim by town waived the filing, was without merit. Hurley v. Town of Bingham, 63 U. 589, 228 P. 213.

No discretion was left to city council to waive verification of notice of street or sidewalk injury claims. Hamilton v. Salt Lake City, 99 U. 362, 106 P. 2d 1028.

Evidence of waiver or estoppel by city employees respecting filing of notice was inadmissible where not alleged. Hamilton v. Salt Lake City, 99 U. 362, 106 P. 2d 1028.

9. Claim against city for sales tax.

Before bringing suit against city to recover sales tax provided for by Emergency Act of 1933 as amended, complaint of commission need not allege that there was presented to defendant a verified claim as required by this section. State Tax Comm. v. City of Logan, 88 U. 406, 423, 54 P. 2d 1197. See 59-15-1 et seq.

10. Equitable claims.

This section does not apply where the principal relief sought is equitable, and the damage prayed merely incidental. Therefore, plaintiff, before suing defend-

ant city to quiet title to premises claimed by city as part of a street, for damages, and for injunctive relief, is not required to present claim as required by this section. Wall v. Salt Lake City, 50 U. 593, 168 P. 766.

11. Injuries on streets and sidewalks.

It is primary duty of city to exercise reasonable care to maintain streets in reasonably safe condition, and to guard against injury to persons and property by removing or making reasonably safe any dangerous objects in streets. Morris v. Salt Lake City, 35 U. 474, 101 P. 373.

This section and others do not authorize a recovery from a municipality for the negligence of its servants engaged in repairing or constructing streets, but only where there has been a failure on the part of the municipality to perform its duty to keep its streets free from unsafe, dangerous, defective or obstructed conditions. Niblock v. Salt Lake City, 100 U. 573, 111 P. 2d 800.

Duty of city to repair or construct streets within its corporate limits is a governmental one, and in absence of statute no liability devolves on municipality for defective condition of its streets. Niblock v. Salt Lake City, 100 U. 573, 111 P. 2d 800.

While the rule that statutes in derogation of the common law must be strictly construed has been abrogated in this state, nevertheless if the liability imposed on city by this section is limited to failure to keep its streets in repair and unobstructed, section 68-3-2 precludes extension of liability further than clear intendment of statute. Niblock v. Salt Lake City, 100 U. 573, 111 P. 2d 800.

City was not liable for negligence of its employee in driving truck in connection with repair of one of its streets. Niblock v. Salt Lake City, 100 U. 573, 111 P. 2d 800.

Phrase "such street" appearing in this section means a street in a defective, unsafe, dangerous or obstructed condition, but liability in any case would be based on negligence, and obstructed condition of street gives rise to no liability if the city has taken proper precautions, such as barriers and warnings. Niblock v. Salt Lake City, 100 U. 573, 111 P. 2d 800.

Ordinarily, a pedestrian with prior knowledge of a sidewalk defect and an unobstructed daylight view who steps into a visible defect is contributorily negligent as a matter of law. Eisner v. Salt Lake City, 120 U. 675, 238 P. 2d 416.

In order that a temporary forgetfulness may be excused, the cause diverting a pedestrian's attention from a known danger in a sidewalk must be unexpected and substantial. Otherwise, the forgetfulness itself may constitute contributory negligence. Eisner v. Salt Lake City, 120 U. 675, 238 P. 2d 416.

A large group of children rushing toward a pedestrian, but not obstructing his view, is not such a sudden and substantial diversion as to excuse the temporary forgetfulness of the pedestrian who steps aside and into a depression in the sidewalk which he knows to be there. Eisner v. Salt Lake City, 120 U. 675, 238 P. 2d 416.

A city is required to exercise reasonable care to keep its streets in safe condition and may be held liable for injuries proximately resulting from failure to do so and, in an action against city for injuries, the failure of a city to warn of or protect a row of dirt left in the street during the installation of a curb and gutter provided a basis upon which the trial court was justified in finding the city negligent. Nyman v. Cedar City, 12 U. (2d) 45, 361 P. 2d 1114.

12. Ice and snow on sidewalk.

Cities and towns are not liable for failure to keep sidewalks free from natural accumulations of ice and snow, but may be held liable for injuries arising from such snow and ice upon streets or sidewalks which are placed there by their own acts. Berger v. Salt Lake City, 56 U. 403, 420, 191 P. 233, 13 A. L. R. 5.

13. Injuries in parks or playgrounds.

Maintenance of parks and playgrounds is governmental function so that city is not liable for negligence of their servants and agents in connection therewith, and exception to rule of immunity in case of streets recognized by this section is founded upon public policy, and cannot be extended to include parks and playgrounds. Alder v. Salt Lake City, 64 U. 568, 231 P. 1102.

Action for injury to child caused by sprinkling truck passing over path in city park to settle dust did not come under 30-day notice provision of this section, since such pathway did not come within the terms of this section, although it might be included under term "way" in the following section. Husband v. Salt Lake City, 92 U. 449, 465, 69 P. 2d 491.

14. Injuries to abutting owners.

City may establish grades and may make streets and sidewalks conform thereto, subject only to action for damages to abutting property. Morris v. Salt Lake City, 35 U. 474, 101 P. 373.

In action against city and independent contractor by abutting owner for dam-

ages which it was alleged were caused in constructing sidewalk through unnecessary and negligent cutting of roots of his trees standing and growing in public street in front of his house, as result of which trees were left without support and fell against house, damaging it, it was held both city and contractor were liable for injuries sustained as result of trees blowing down. Morris v. Salt Lake City, 35 U. 474, 101 P. 373.

15. Injuries caused by defective or unsafe bridges.

Mere fact that claimant for damages for injuries resulting from the defective condition of a bridge demanded a less sum than he was entitled to recover did not, on rejection of his claim, preclude him from recovering by action his actual damages though they exceeded the amount of his claim on file. Mackay v. Salt Lake City, 29 U. 247, 81 P. 81, 4 Ann. Cas. 824.

16. Claims for death of claimant.

This statute does not include claims or damages arising out of death. Brown v. Salt Lake City, 33 U. 222, 93 P. 570, 14 L. R. A. (N. S.) 619, 14 Ann. Cas. 1004, 126 Am. St. Rep. 828.

A verified claim must be filed within 30 days for "any" damages claimed against a city or town, whether injuries to the person, or to property, or damage caused to a third person by death resulting from such injuries, and arising out of torts falling within the claims enumerated in the first part of this section. Nelson v. Logan City, 103 U. 356, 135 P. 2d 259, reviewing at great length the statutory law in this state and in other states.

A suit or claim for damages for the death of a person is not a suit for damages to the person or property of the deceased, but a suit for damages by a person who had an interest in the life of the deceased and a right of action against anyone negligently causing the destruction of that life. Nelson v. Logan City, 103 U. 356, 135 P. 2d 259.

17. Complaint, sufficiency of allegations.

Where plaintiff sustained damages to his automobile on city streets, and presented a claim for "necessary repairs to automobile $133," he cannot claim and recover additional damages for $1000 for its "depreciation in value and general impairment," since such claim was not included in original claim, and could not be said to be proximate consequence of injuries therein included. Sweet v. Salt Lake City, 43 U. 306, 134 P. 1167, 8 N. C. C. A. 922.

Under this section, though a complaint contained an item for $1000 damages not included in such original claim, yet if it did recite items that were included, it was not vulnerable to general demurrer. Sweet v. Salt Lake City, 43 U. 306, 134 P. 1167, 8 N. C. C. A. 922.

Where claimant against city, within 30 days given him by this section, is unable, or, in exercise of reasonable diligence, does not, discover and know, and hence cannot state, all consequences of injury, and he thereafter discovers that the natural and proximate consequences of injuries stated in his claim have developed to be more serious than was known at time he filed claim, he should not be prevented from recovering for such consequences, provided he states reasons why he could not at time state all consequences of injuries. Berger v. Salt Lake City, 56 U. 403, 191 P. 233, 13 A. L. R. 5.

In suit for damages for personal injuries sustained by falling on sidewalk of defendant city, held plaintiff could not recover for permanent injuries in an amount in excess of the amount claimed in notice to city on ground that her injuries were more serious than at first supposed, where she alleged no excuse why she could not at time state all consequences of injuries described in complaint. Berger v. Salt Lake City, 56 U. 403, 191 P. 233, 13 A. L. R. 5.

Statutory right to recover, granted by this section, can be availed of only when there has been a compliance with the conditions upon which right is conferred. One who seeks to enforce the right must by allegation and proof bring himself within the conditions prescribed thereby. Hamilton v. Salt Lake City, 99 U. 362, 367, 106 P. 2d 1028.

Collateral References.

Municipal Corporations⇨812(6).

63 C.J.S. Municipal Corporations § 925.

Claims against municipality, 38 Am. Jur. 379, Municipal Corporations § 671 et seq.

Amount of damages named in notice of claim against municipality as limiting amount of recovery, 75 A. L. R. 1511.

Applicability of statute or ordinance requiring notice of claim for damages from injuries in street as affected by conditions which caused the injury, 10 A. L. R. 249.

Auditorium, or the like, maintenance by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A. L. R. 2d 544.

Bathing beach or swimming pool, operation as governmental or proprietary func-

tion for purpose of tort liability, 55 A. L. R. 2d 1434.

Construction, application, and effect of statutory provisions avoiding effect of inaccuracy or omission in notice of injury required as condition of municipal liability, 103 A. L. R. 298.

Continuing character of municipality's negligence and injury or damage therefrom as affecting requirement of notice to municipality, 116 A. L. R. 975.

Death as result of injury as affecting time to give notice of claim, 51 A. L. R. 2d 1128.

— effect on necessity of notice of claim against municipality, 51 A. L. R. 2d 1132.

Destruction of weeds and the like, tort liability of municipality in connection with, 34 A. L. R. 2d 1210.

Erosion underneath street or highway as ground of liability of state or municipality for injury, 158 A. L. R. 784.

Garage for maintenance and repair of municipal vehicles, operation as governmental function, 26 A. L. R. 2d 944.

Incapacity as excuse for failure to give or delay in giving notice of accident or injury, 34 A. L. R. 2d 725, 51 A. L. R. 2d 1128.

Indemnity insurance carried by governmental unit as affecting immunity from tort liability, 68 A. L. R. 2d 1437.

Joinder as defendants, in tort action based on condition of sidewalk or highway, of municipal corporation and abutting property owner or occupant, 15 A. L. R. 2d 1293.

Liability of municipality as bailee for damage to airplane, 17 A. L. R. 2d 920.

Liability of municipality for —

— assault by municipal employee in collecting debt, 22 A. L. R. 2d 1232.

— damage caused by fall of limb of tree, 14 A. L. R. 2d 191.

— damage from obstruction of drain or sewer where obstruction is authorized by municipality, 59 A. L. R. 2d 319.

— damages for maintenance of sewage disposal plant as nuisance, 40 A. L. R. 2d 1198.

— damages in tort in operating hospital as affected by ultra vires nature of activity, 25 A. L. R. 2d 225.

— drowning of child on its premises, 8 A. L. R. 2d 1254.

— failure to cut weeds, brush, or other vegetation obstructing or obscuring view at railroad crossing or street or intersection, 42 A. L. R. 2d 817.

— injuries by ball to person on premises nearby municipally owned ball park, 16 A. L. R. 2d 1458.

— injuries from fall or slipping on debris or litter on outdoor stairway, 47 A. L. R. 2d 1086.

— injury from slide or chute, 69 A. L. R. 2d 1067.

— injury or damage from explosion or burning of substance stored by third person under municipal permit, 17 A. L. R. 2d 683.

— injury or damage resulting from insect and vermin eradication operations, 25 A. L. R. 2d 1057.

— injury to children by fire under attractive nuisance doctrine, 27 A. L. R. 2d 1194.

— injury to, or death of, child caused by burning from hot ashes, cinders, or other hot waste material, 42 A. L. R. 2d 947.

— injury to, or death of, child caused by cave-in or landslide, 28 A. L. R. 2d 195.

— injury to, or death of, child caused by cut or puncture caused by broken glass or other sharp object, 47 A. L. R. 2d 1053.

— injury to pedestrian due to condition of street or highway as affected by his blindness or other physical disability, 141 A. L. R. 721.

— maintenance of public dump as nuisance, 52 A. L. R. 2d 1134.

— negligence or other wrongful act in carrying out construction or repair of sewers or drains, 61 A. L. R. 2d 874.

— nuisance in carrying out construction or repair of sewer or drain, 61 A. L. R. 2d 880.

— pollution of subterranean waters, 38 A. L. R. 2d 1305.

— spreading of fire purposely and lawfully kindled, 24 A. L. R. 2d 291.

Liability of public officer and his sureties in respect of payments made without compliance with procedure prescribed for payment of claims, 146 A. L. R. 762.

Municipal immunity from liability for tort, 60 A. L. R. 2d 1198.

— rule of municipal immunity from liability for acts in performance of governmental function as applicable to personal injury or death as result of nuisance, 56 A. L. R. 2d 1415.

— test as to character of act or function under rule of municipal immunity from liability for tort, 60 A. L. R. 2d 1203.

Municipality's duty and liability with respect to excavation made by abutting owner to connect his property with service mains in street, 13 A. L. R. 2d 922.

Necessity and sufficiency of statement as to amount of damages or compensation claimed, in notice or claim required as

condition of municipal liability for injury to person or property, 136 A. L. R. 1368.

Necessity and sufficiency of statement in notice of tort claim against county or municipality regarding identity of officers or employees chargeable with fault, 150 A. L. R. 1054.

Necessity of notice of claim for damages from mob or riot, 17 A. L. R. 779, 44 A. L. R. 1137, 52 A. L. R. 562.

Necessity of notice of claim for injuries due to overflow of water from street on abutting land, 10 A. L. R. 252.

Necessity of presenting claim against municipality for damaging property, 52 A. L. R. 639.

Necessity of presenting claim for damage to property by street improvement, 52 A. L. R. 645.

Necessity of presenting claim for damage to property from sewers or drains, 52 A. L. R. 651.

Necessity of presenting claim for damage to property resulting from operation of waterworks, 52 A. L. R. 655.

Notice of claim, conditions causing injury as affecting necessity for and sufficiency of notice, 10 A. L. R. 249.

—damages named in notice as limiting recovery, 75 A. L. R. 1511.

— infancy or incapacity as excusing, 34 A. L. R. 2d 725, 51 A. L. R. 2d 1128.

— nuisance causing injury, necessity of notice, 10 A. L. R. 253.

— variance between notice and proof, 52 A. L. R. 2d 966.

— waiver of notice, 82 A. L. R. 749, 153 A. L. R. 329, 65 A. L. R. 2d 1278.

Parking facilities, provision of, as exercise of governmental or proprietary function, 8 A. L. R. 2d 397.

Parking meters, installation or operation as within governmental immunity from tort liability, 33 A. L. R. 2d 761.

Persons upon whom notice of injury or claim against municipal corporation may or must be served, 23 A. L. R. 2d 969.

Places within operation of statute or ordinance requiring notice of claim as a condition of municipal liability for injuries, 72 A. L. R. 840.

Power of city, town, or county or its officials to compromise claim, 105 A. L. R. 170, 15 A. L. R. 2d 1359.

— authority of attorney acting in official capacity to dismiss or otherwise terminate action, 56 A. L. R. 2d 1295.

Requirement of notice of injury or claim as condition of action against municipality as applicable to injury or death of municipal officer, 98 A. L. R. 522.

Right of person not named as claimant in notice of claim against municipality to maintain action thereon, 63 A. L. R. 1080.

Statute requiring notice of claim for damages from injuries in street as applicable to injuries caused by nuisance, 10 A. L. R. 253.

Statute respecting presentation of liability claim against municipality as affecting its powers in that field, 170 A. L. R. 237.

Sufficiency of description of personal injury in notice given thereof as a condition of municipal liability, 63 A. L. R. 2d 863.

Sufficiency of notice of claim against municipality as regards identity, name, and residence of claimant, 130 A. L. R. 139, 63 A. L. R. 2d 911.

— as regards description of personal injury or property damage, 63 A. L. R. 2d 863.

— as regards description of place where accident occurred, 62 A. L. R. 2d 340.

— as regards time when accident occurred, 63 A. L. R. 2d 888.

— with respect to nature of defect and cause of accident, 62 A. L. R. 2d 397.

Validity, construction, and application of statute or ordinance requiring that judgments against municipality be paid in order of their entry or in other particular sequence, 138 A. L. R. 1303.

Variance between notice of claim against municipality and proof, 68 A. L. R. 1532, 52 A. L. R. 2d 966.

Waiver of failure to give notice of claim or injury, 82 A. L. R. 749, 153 A. L. R. 329, 65 A. L. R. 2d 1278.

— claimant's deposition or statement taken by municipal body as waiver of statutory notice of claim of injury, 41 A. L. R. 2d 890.

What amounts to claim for personal injury within statute or ordinance requiring notice as condition of municipal liability, 97 A. L. R. 118.

10-7-78. Failure to file, a bar—Amendment of claim.—It shall be a sufficient bar and answer to any action or proceeding against a city or town in any court for the collection of any claim mentioned in section 10-7-77, that such claim had not been presented to the governing body of such city or town in the manner and within the time specified in section

10-7-77; provided, that in case an account or claim, other than a claim made for damages on account of the unsafe, defective, dangerous or obstructed condition of any street, alley, crosswalk, way, sidewalk, culvert or bridge, is required by the governing body to be made more specific as to itemization or description, or to be properly verified, sufficient time shall be allowed the claimant to comply with such requirement.

History: R. S. 1898, § 313; L. 1903, ch. 19, § 1; 1905, ch. 5, § 1; C. L. 1907, § 313; C. L. 1917, § 817; R. S. 1933 & C. 1943, 15-7-77.

Compiler's Note.

The references in this section to "section 10-7-77" appeared in Code 1943 as "section 15-7-76."

Cross-Reference.

Limitation of action on rejected claim against city or town, 78-12-30.

1. Constitutionality and construction.

The legislature has an undoubted and absolute right to impose such conditions as those contained in 10-7-77 upon the right to sue the city or town. Sweet v. Salt Lake City, 43 U. 306, 315, 134 P. 1167, 8 N. C. C. A. 922.

This section amounts to a limitation statute. Hamilton v. Salt Lake City, 99 U. 362, 106 P. 2d 1028.

2. Presentation of claim.

Plaintiff has no cause of action for damages to his crops caused by seepage of water from defendant city's canal, where no claim was presented therefor to city within a year. Dahl v. Salt Lake City, 45 U. 544, 147 P. 622.

3. Necessity for presentation of claim.

Presentation of claim within time fixed by law is a condition precedent to bringing action against town. Hurley v. Town of Bingham, 63 U. 589, 228 P. 213.

Failure to file claim barred action against town, and contention that consideration of claim by town waived the filing was without merit. Hurley v. Town of Bingham, 63 U. 589, 228 P. 213.

Where no claim was filed as required by this section, action to recover moneys expended to construct bridge over canal, which bridge city had agreed to construct, was barred. Thomas E. Jeremy Estate v. Salt Lake City, 87 U. 370, 49 P. 2d 405.

In suit by state tax commission against a city to recover sales tax levied against city under subd. (b) (2) of 59-15-4, complaint need not allege that commission, prior to bringing suit, presented to defendant city a verified claim as required by this section. State Tax Comm. v. City of Logan, 88 U. 406, 423, 54 P. 2d 1197.

4. Tolling statute.

Where claim was not filed, action was barred and Code 1943, 104-2-37, tolling statutes of limitation because of disability, had no application. Hurley v. Town of Bingham, 63 U. 589, 228 P. 213. For present law, see Judicial Code 78-12-36.

An action for wrongful death is barred by failure to comply with requirements of 10-7-77. Nelson v. Logan City, 103 U. 356, 135 P. 2d 259.

5. Verification of claims.

In action to recover damages from city for injuries sustained in fall due to allegedly defective sidewalk, held that action was barred under this section due to plaintiff's noncompliance with 10-7-77, where plaintiff filed unverified claim with board of commissioners within thirty days after accident, and over six months after accident filed amended claim which contained verification. Peterson v. Salt Lake City, 118 U. 231, 221 P. 2d 591.

6. Pathway in city park.

A pathway in a city park may be a "way" within meaning of proviso to this section. Husband v. Salt Lake City, 92 U. 449, 69 P. 2d 491.

Collateral References.

Municipal Corporations⇐812(2).

63 C.J.S. Municipal Corporations § 923.

Claims against municipality, 38 Am. Jur. 379, Municipal Corporations § 671 et seq.

Estoppel as to claim against municipality, 1 A. L. R. 2d 338.

Legislative power to revive claim barred by limitation, 36 A. L. R. 1316, 133 A. L. R. 384.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury, 82 A. L. R. 749, 153 A. L. R. 329, 65 A. L. R. 2d 1278.